UNITED
NATIONS

CERD

International Convention on the Elimination of all Forms of Racial Discrimination

Distr.
GENERAL

CERD/C/SR.938-956 (Vol. I)
22 December 1993

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-first session

SUMMARY RECORDS OF THE 938th TO 956th MEETINGS

Held at the Palais des Nations, Geneva,
from 3 to 14 August 1992

Volume I

PUBLIC MEETINGS*

Chairman: Mr. VALENCIA RODRIGUEZ

Rapporteur: Mr. BANTON

The list of members attending the session may be found in the report of the Committee to the General Assembly (Official Records of the General Assembly, Forty-seventh Session, Supplement No. 18 (A/47/18), chap. I, paras. 6 and 7).

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* The Committee also held three closed meetings, the summary records of which (CERD/C/SR.946/Add.1, 953 and 954/Add.1), contained in document CERD/C/SR.938-956 (Vol. II), were issued in restricted distribution.

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CERD/C/SR.938
6 August 1992

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-first session

SUMMARY RECORD OF THE 938th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 3 August 1992, at 10.30 a.m.

Temporary Chairman: Mr. BLANCA (Director-General of the United Nations Office at Geneva and Under-Secretary-General for Human Rights)

Chairman: Mr. VALENCIA RODRIGUEZ

The meeting was called to order at 10.45 a.m.

OPENING OF THE SESSION BY THE REPRESENTATIVE OF THE SECRETARY-GENERAL (item 1 of the provisional agenda) (CERD/C/227)

1. The TEMPORARY CHAIRMAN declared open the forty-first session of the Committee on the Elimination of Racial Discrimination, and welcomed the members of the Committee, especially its three new members. He was particularly gratified to be addressing the Committee for the first time since assuming his responsibilities as Director-General of the United Nations Office at Geneva and Under-Secretary-General for Human Rights.

2. The recent momentous changes in the world offered new opportunities for progress in promoting and protecting human rights. There had never been a greater international consensus on the importance of the Organization's role in facilitating international peace and security and on the fundamental linkage between the maintenance of peace and security and the implementation of international human rights norms. That had been reflected in a dramatic increase in accessions to the various United Nations human rights treaties. For instance, there were now 132 States parties to the Convention on the Elimination of All Forms of Racial Discrimination, and 161 States were party to one or more of the seven human rights instruments under which treaty monitoring bodies operated. That development marked a real success for the human rights treaty system.

3. Paradoxically, however, the end of the cold war, while bringing relief from the fear of global war and devastation, had been followed by new assertions of nationalism, as well as ethnic and religious challenges to social peace and the cohesion of States. While the right of peoples to self-determination was enshrined in the Charter, if every racial, national, ethnic or linguistic group claimed statehood, the resulting fragmentation would make peace, security, economic well-being and the observance of human rights more difficult to achieve. That made it all the more necessary to promote a deeper sensitivity to the rights of minorities and a firm commitment to counter racist violence and discrimination. The work of the Committee was therefore especially important at the present juncture.

4. Against that background, the cancellation of the Committee's spring session and the curtailment of the current session could only be deplored, inhibiting as they did the Committee's ability to discharge its responsibilities under the Convention effectively. The amendment adopted at the 14th meeting of States parties to the Convention in January 1992 to the funding provisions of the Convention represented a major step towards solving the chronic problems arising from the non-fulfilment by a number of States parties of their financial obligations. Meanwhile, however, the financial situation of the Committee remained critical and would not be resolved until all the necessary steps had been taken to meet the costs of implementing the Convention on a sustained, guaranteed basis. In a context of increasing human rights violations, the reluctance of States parties to contribute to the Committee's operation was difficult to understand in view of the relatively small sums involved compared with other items of budgetary expenditure. It raised doubts as to countries' genuine will to combat human rights violations.

5. Notwithstanding those difficulties, he was confident that the Committee would proceed with its work with its customary dedication, inter alia, by finalizing its recommendations regarding draft model national legislation. It might also discuss its possible contribution to the third session of the Preparatory Committee for the World Conference on Human Rights.

6. Among the interesting developments that had taken place in other United Nations human rights bodies since the Committee's previous session had been the adoption by the Commission on Human Rights at its 1992 session of the draft declaration on the rights of persons belonging to national, ethnic, religious and linguistic minorities, to be considered by the General Assembly at its forthcoming session. The draft declaration was reproduced in Human Rights Fact Sheet No. 18 entitled "Minority Rights", recently published by the Centre for Human Rights and made available to members of the Committee in English. Other language versions would be published in the near future.

7. Another noteworthy development was the designation of 1993 as International Year for the World's Indigenous People. As Coordinator of the International Year, he would be gratified if the Committee would consider how it could turn its considerable experience in that area to account in contributing to the activities planned for the Year. For the Committee's information, the Sub-Commission on Prevention of Discrimination and Protection of Minorities would be considering at its current session a nearly-complete draft declaration on the rights of indigenous peoples, and a number of other related questions, in preparation for the Year.

8. A series of regional conferences had been scheduled before the end of the year in preparation for the World Conference on Human Rights, which was now tentatively scheduled to be held in Vienna from 14 to 25 June 1993. The fourth meeting of persons chairing the human rights treaty bodies would take place in Geneva from 12 to 16 October 1992.

9. He assured the Committee of the full support of the Centre for Human Rights in its work and wished the Committee a successful session.

SOLEMN DECLARATION BY THE NEWLY ELECTED MEMBERS OF THE COMMITTEE UNDER RULE 14 OF THE RULES OF PROCEDURE (item 2 of the provisional agenda) (CERD/C/227)

10. At the invitation of the TEMPORARY CHAIRMAN, Mr. van BOVEN, Mr. DIACONU and Mr. VALENCIA RODRIGUEZ, the newly elected members, and Mr. FERRERO COSTA, Mr. GARVALOV, Mr. RECHETOV, Mrs. SADIQ ALI, Mr. SONG Shuhua and Mr. YUTZIS, the re-elected members, made the solemn declaration provided for under rule 14 of the Committee's rules of procedure.

ORGANIZATION OF WORK

11. Mr. ABOUL-NASR said that in view of Mr. Blanca's recent appointment, on which he was to be congratulated, and of the Committee's current

situation, he hoped that arrangements could be made during the session for further discussions between Mr. Blanca and the Committee on the latter's role and activities.

12. Several points in Mr. Blanca's opening statement called for comment. The United Nations Secretariat was as much to blame for failing to solve the Committee's problems and for failing to enable it to meet regularly as were States parties to the Convention for failing to pay their dues. The Secretary-General himself had spoken about the preventive measures that should be taken to build peace. The Committee could play such a preventive role in a context of racial and ethnic strife in the world. The United Nations never failed to secure the necessary funding, through loans or other means, for its peace-keeping and peace-making efforts, and he was unconvinced by the arguments put forward to justify the failure to secure the necessary funds - a matter of a few thousand dollars - to enable the Committee to function properly. He hoped that after discussing the Committee's future work, Mr. Blanca could act as an intermediary between the Committee and the United Nations authorities at Headquarters.

13. Mr. RECHETOV expressed full agreement with Mr. Aboul-Nasr. It was clear that a failure to adopt the correct approach to human rights issues could lead to bloodshed and conflict and bring past achievements to naught. The verbal assurances given by the many young States which had previously been under totalitarian rule and were now joining the United Nations family must be followed by deeds. The new States urgently needed guidance on how to interpret and implement human rights in practice, failing which there was a danger that the old disease, which could already be observed in some areas, would take root again and develop into a malignant tumour. The Committee on the Elimination of Racial Discrimination was one of the bodies that could provide such guidance and, through its reporting system, provide a forum to enable those States to report on their activities and state their intentions in the areas covered by the Convention.

14. The TEMPORARY CHAIRMAN said that, as representative of the Secretary-General, he was fully prepared to hold further discussions with the Committee on the Secretariat's role in finding practical ways and means of enabling the Committee to meet regularly. He knew that the Secretary-General was particularly anxious to see the Committee functioning properly. A possible solution might be for the Committee to send a message to the Secretary-General which he himself would be pleased to convey with his own comments. Such an approach was unusual, but the cancellation and curtailment of sessions of a human rights treaty monitoring body themselves constituted an unusual occurrence, and should not be repeated.

15. Mr. YUTZIS endorsed Mr. Aboul-Nasr's suggestion and thought that an appropriate time should be set aside in the Committee's agenda for such a meeting.

16. The TEMPORARY CHAIRMAN reiterated his willingness to hold a formal or informal discussion with the Committee, to be arranged by the Secretariat at a convenient time.

ELECTION OF OFFICERS (item 3 of the provisional agenda) (CERD/C/227)

17. Mr. YUTZIS, supported by Mr. ABOUL-NASR, requested time for further consultations before the Committee proceeded to elect its officers.

The meeting was suspended at 11.20 a.m. and resumed at 11.55 a.m.

18. The TEMPORARY CHAIRMAN invited the Committee to elect a Chairman for a term of two years.

19. Mr. ABOUL-NASR nominated Mr. Valencia Rodriguez.

20. Mr. FERRERO COSTA, speaking on behalf of the Latin American group, nominated Mr. Yutzis.

21. Mr. LAMPTEY seconded the nomination of Mr. Valencia Rodriguez, although he was confident that Mr. Yutzis would prove an equally capable Chairman.

22. The TEMPORARY CHAIRMAN said that, since there was more than one candidate, the Committee would proceed to a vote by secret ballot in accordance with rule 58 of its rules of procedure.

A vote was taken by secret ballot.

Number of valid ballots: 16

Number of members voting: 16

Number of votes obtained:

Mr. Valencia Rodriguez 10

Mr. Yutzis 6

Mr. Valencia Rodriguez, having obtained the required majority, was elected Chairman.

Mr. Valencia Rodriguez took the Chair.

23. The CHAIRMAN invited the Committee to elect three Vice-Chairmen and a Rapporteur for a term of two years.

24. Mr. LAMPTEY nominated Mr. Ahmadu for the office of Vice-Chairman.

25. Mr. SHAHI seconded the nomination and also nominated Mrs. Sadiq Ali for the office of Vice-Chairman.

26. Mr. RECHETOV, speaking on behalf of the Eastern European group, nominated Mr. Diaconu for the office of Vice-Chairman.

27. Mr. WOLFRUM seconded the nomination of Mr. Ahmadu, Mrs. Sadiq Ali and Mr. Diaconu as Vice-Chairmen. On behalf of the European group, he nominated Mr. Banton for the office of Rapporteur.

28. Mr. SONG Shuhua seconded the nominations for the three Vice-Chairmen and the Rapporteur.

Mr. Ahmadu, Mrs. Sadiq Ali and Mr. Diaconu were elected Vice-Chairmen by acclamation.

Mr. Banton was elected Rapporteur by acclamation.

ADOPTION OF THE AGENDA (item 4 of the provisional agenda) (CERD/C/227)

29. Mr. YUTZIS said that, at the previous session, the Committee had decided that further contacts should be arranged with the Sub-Commission on Prevention of Discrimination and Protection of Minorities. It was important that discussion of the matter should not be shelved as a result of the curtailment of the session.

30. Mr. DIACONU agreed. He suggested that the Chairman of the Committee should contact the Chairman of the Sub-Commission to see whether a joint meeting would be feasible during the two weeks of the Committee's session.

31. Mr. ABOUL-NASR said that, in view of the volume of work, he was in favour of adopting the provisional agenda before discussing the possibilities for contacts with the Sub-Commission. It might, however, be useful for the Committee's officers to meet their counterparts in the Sub-Commission for an exchange of ideas.

32. Mr. BANTON said that, under item 5 (b) of the provisional agenda, relations with many bodies would need to be considered. Members of the Committee had been elected to liaise with other treaty monitoring bodies and members would also need to be appointed for liaison with the Committee on Economic, Social and Cultural Rights and the Committee against Torture. Relations with the Sub-Commission could thus be dealt with as one of the many matters to be discussed under agenda item 5 (b).

33. Mr. WOLFRUM agreed with Mr. Banton and Mr. Aboul-Nasr. In view of the Committee's heavy workload, time was of the essence and he doubted whether space could be made for a meeting with the Sub-Commission at the current session.

34. Mr. de GOUTTES said he supported Mr. Diaconu's suggestion that the Committee's Chairman should contact the Chairman of the Sub-Commission to discuss the possibilities.

35. Mr. van BOVEN said that, as a former member of the Sub-Commission, he had been one of the first to suggest a joint meeting with the Committee to coordinate action. It was, however, of the utmost importance that such meetings should not take on a purely ceremonial character. He therefore supported Mr. Aboul-Nasr's suggestion that the Committee's officers should meet their counterparts to exchange ideas on coordination and other matters. It was essential that enough time was kept available for discussion of matters on the Committee's own agenda.

36. Mr. YUTZIS said that his intention had been merely to ensure that the question of links with the Sub-Commission was not overlooked and he was not

necessarily advocating a joint meeting. He agreed with Mr. Banton that the Committee necessarily had to consider the maintenance of links with other human rights organizations.

37. He also agreed with Mr. Blanca that space must be found in the Committee's programme for the discussion of financial questions.

8. Mr. SHAHI said that the first session of the Preparatory Committee for the World Conference on Human Rights had been constructive and suggestions had been made for cooperation in the submission of proposals to the Conference. At the second session, however, the Committee had failed even to agree on agenda items. It was to be hoped that, at the next session, the Sub-Commission and the Committee would be in a position to coordinate their proposals and recommendations, but, in the meantime, the Chairman of the Committee should contact his counterpart in the Sub-Commission to assess the situation and, if appropriate, decide on the date for a joint meeting.

39. The CHAIRMAN said he assumed that the Committee wished to adopt the provisional agenda (CERD/C/227).

It was so agreed.

40. The CHAIRMAN informed the Committee that the Republic of Korea, Bolivia and Ecuador had requested the Secretary-General that consideration of their reports should be postponed until a later session. The Russian Federation had stated that its periodic report would be submitted at the appropriate time.

The meeting rose at 1.10 p.m.

CERD/C/SR.939
28 August 1992

ENGLISH
Original: FRENCH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-first session

SUMMARY RECORD OF THE 939th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 3 August 1992, at 3 p.m.

Chairman: Mr. VALENCIA RODRIGUEZ

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7)

Fifth, sixth, seventh and eighth periodic reports of Belgium (CERD/C/194/Add.3 and HRI/CORE/51)

At the invitation of the Chairman, Mr. Reyn, Mr. Van Craen, Mr. Wilmotte and Mr. Sant'Angelo (Belgium) took places at the Committee table.

1. Mr. REYN (Belgium) informed the members of the Committee that Belgium particularly regretted its backlog of reports since it attached great importance to the bodies and mechanisms established by the United Nations for the protection and promotion of human rights. The delay was mainly due to the State reform process and the rapid pace of constitutional and legislative change in the country. In the space of about 10 years, the Belgian State had gone over from a unitary structure to a federal system, which had brought about institutional changes that were still under way.

2. The report of Belgium was in three parts. The first part (CERD/C/194/Add.3) covered the legal provisions the country had adopted under the various articles of the Convention, the second part (HRI/CORE/51) contained political, socio-economic and juridical information, compiled in accordance with the consolidated guidelines concerning the reports of States parties, and the third part consisted of a series of documents intended to supplement the information in the main report.

3. Drawing attention to some of the components of its human rights activities to which the Belgian Government attached the utmost importance, he said that Belgium had always condemned all forms of racial discrimination and rejected all forms of racial intolerance as being a violation of the fundamental rights of the individual. Within its borders, it was constantly at pains to ensure compliance with its obligations, particularly those deriving from the commitments it had undertaken, and it had taken a number of measures to guarantee the rights of every individual. Belgium continued to support in the various forums all measures that would ensure the smooth functioning of the monitoring mechanisms and was in favour of in-depth, continuous, open and frank dialogue with the various competent bodies, including the Committee for the Elimination of Racial Discrimination, in order to ensure a better flow of information and deeper mutual understanding.

4. Mr. WILMOTTE (Belgium), outlining some of the fundamental principles governing the system of legal protection for aliens residing in Belgium, drew the Committee members' attention to the Belgian Nationality Code as established by an Act of 1984, taking into account Belgium's international obligations in that area. The Code, which had established the principle of equality between men and women for the acquisition of nationality, had been amended in July 1991 by an Act providing for automatic acquisition of Belgian nationality by third-generation children, in other words children born in Belgium of parents who had themselves been born in the country.

5. On the subject of equal treatment, he recalled that article 128 of the Constitution stated that any alien on Belgian territory enjoyed the protection accorded to persons and property, unless otherwise specified by the law. There were special regulations applicable to aliens with regard to entry, residence and removal. It should be noted in that connection that since 15 July 1992, it had been the Minister of the Interior, and no longer the Minister of Justice, who was competent to deal with questions relating to the entry, residence and removal of aliens. Those regulations might appear to be discriminatory, but the principle of equal treatment was the cornerstone of Belgian policy with regard to aliens. The latter enjoyed the same constitutional freedoms as Belgian citizens. That constitutional principle was underpinned by the international instruments which Belgium had ratified, such as the Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination.

6. With regard to the juridical effects of international instruments on the domestic legal system, he said that, in the absence of any relevant provision in a treaty, it was for the judge to determine whether the treaty was directly applicable. As to determining the status of international instruments in the hierarchy of laws in Belgium, the various attempts made to incorporate into the Constitution a general principle regarding the juridical validity of treaties in relation to that of domestic legislation had been unsuccessful. The matter had been settled by case law; the Supreme Court of Appeal (Cour de cassation), which was the highest court, had recognized the primacy of international instruments over national laws even if the latter had been adopted after the instrument in question. In other words, Belgian citizens and aliens alike could directly invoke the provisions of international treaties before the administrative authorities and courts, and judges were obliged to take them into consideration.

7. Mr. SANT'ANGELO (Belgium), giving further information concerning anti-racist measures taken in Belgium, said that an Office of the Crown Commissioner for Immigration Policy had been set up by the Government just over three years previously. Under the authority of the Prime Minister, it was responsible for considering the situation of immigration and immigrants and recommending appropriate measures. The Crown Commissioner was assisted in his duties by an Interministerial Conference on Immigration, headed by the Prime Minister. The agenda of the Conference was drawn up by the Office of the Commissioner, which meant that the latter could include in it any matters it felt needed urgent attention. The Office was also responsible for explaining to the general public, in other words to immigrants and native Belgians alike, the recommendations that were submitted and the decisions taken.

8. There were no ethnic minorities in Belgium and immigrants fell into two major categories: immigrants of Moroccan origin and immigrants of Turkish origin. Those were the two communities most often victimized and subject to discrimination, racism and xenophobia. While attaching due importance to the Act of 30 July 1981 whose purpose was to suppress certain acts based on racism or xenophobia, the Office of the Crown Commissioner was mainly concerned with looking into the social, economic and cultural causes of discrimination, and

recommended measures to foster the integration of immigrants into society. Those measures had two objectives: equality of rights and equal treatment for all citizens.

9. Mr. FERRERO COSTA, rapporteur for Belgium, welcomed the resumption of the dialogue with Belgium, which was submitting four reports together, covering the period 1984-1990. He thanked the Belgian Government for the large amount of information provided for the Committee in writing, and the Belgian delegation for the additional information presented orally.

10. He did not think, however, that a State should be so slow in submitting its reports, and recalled that article 9 of the Convention and the Committee's guidelines specified a time-limit for reporting. The reason given by Belgium, namely its constitutional and legislative reforms, did not justify such a backlog, since a State embarking upon a reform process should, on the contrary, keep the Committee regularly informed of progress made. As to the shortage of staff referred to by the Belgian Government (CERD/C/194/Add.3, para. 1), he pointed out that the Committee had already made it clear on several occasions that the Centre for Human Rights could provide assistance to States which had difficulty in preparing their reports. He hoped, therefore, that Belgium would be able to submit its following report within the prescribed time-limit.

11. As the Belgian delegation had pointed out, the report before the Committee consisted of three parts - a basic information document (HRI/CORE/51), the eighth periodic report (CERD/C/194/Add.3), combining the fifth, sixth, seventh and eighth periodic reports due from Belgium, and annexes which were unfortunately not available in Spanish.

12. The basic document and the report alone represented 71 pages of information, from which it emerged clearly that the case of Belgium was a very complex one, there being, on the one hand, the Flemish, Walloon and German-language communities and, on the other, aliens, who accounted for 9 per cent of the population. The information provided by Belgium also included a description of constitutional and legislative reforms, as well as laws already in force, such as the 1981 Act for the repression of certain acts based on racism or xenophobia. That Act had already been considered by the Committee, but warranted further consideration. Since he could not review all the information provided, he would confine his comments to a few points and would leave it to other members of the Committee to make their own comments.

13. With regard, first of all, to the core document constituting the first part of the State party's reports (HRI/CORE/51), he noted that Belgium was made up of three regions (the Walloon Region, the Brussels-Capital Region and the Flemish Region) and four linguistic communities (one French-speaking, one Dutch-speaking, one German-speaking and one bilingual community, that of Brussels), which gave rise to a complex institutional system, incorporating checks and balances.

14. He noted that Belgium provided a large number of statistics on aliens living on its territory, but very few on the national population. He would therefore like to have details on the situation of nationals, the relations between the various linguistic communities and their distribution in each of the three regions of Belgium. In the core document, reference was made to

two major communities, the French-language community and the Dutch-language community, and he wondered about the situation of German-speaking citizens and that of other national minorities and about how they could protect their rights.

15. He also wished to have further information on the Court of Arbitration referred to in paragraph 42 of the core document. How did it function? Had any cases been brought before it, and, if so, what decisions had it handed down?

16. Referring to paragraph 44 of the core document, he said that the characteristic feature of a federal State structure was the existence of two distinct legal orders, that of the federal entity and that of its component parts, each with its own system of legislative and executive rules and bodies. That was the case of Belgium, where the communities and the regions were authorities with the same status as the national authority. He wondered how the system worked between the three regions and four linguistic communities of Belgium and whether there was any incompatibility between the laws of the regions and of the communities. He also wondered whether there might not be any conflict between the legislative powers of the various communities and regions and the competence of the Belgian State.

17. On the subject of the automatic incorporation of international instruments into domestic law, he wished to know how the Convention was incorporated into national legislation and how it was implemented.

18. Referring to the Act of 30 July 1981 to suppress certain acts based on racism or xenophobia, referred to in paragraphs 11 to 26 of the report CERD/C/194/Add.3, he asked whether the system of protection for aliens mentioned in paragraph 11 covered citizens as well. The same paragraph stated that it lay with judicial practice to "sift out gradually the meaning of such an act" (of racism or xenophobia). It would be desirable for the Committee to have more ample information on such judicial practice. In paragraph 13, dealing with article 1 of the Act, the broad scope of the Act was underscored; and yet it emerged from paragraph 18 of the report that an offence must be of a public character, which might be regarded as a restriction on the scope of the Act. Some clarification was needed on the question of differentiation, which, according to paragraph 14, was tolerated whereas discrimination was not. Further information would also be welcomed on jurisprudence in connection with cases brought before the Brussels and Charleroi courts of first instance and the Brussels and Hasselt correctional courts, referred to in paragraph 17. The same applied to the case law mentioned in paragraph 20 (concerning article 2 of the Act) which was based on decisions by the Hasselt and Namur correctional courts and the Liège Court of Appeal.

19. Article 3 of the Act of 1981 did not seem to cover all the provisions of article 4 of the Convention. For instance, in paragraph 22 of the report, reference was made to organizations advocating discrimination which "would cease to exist for lack of members". Did that mean that those associations were acceptable under the law and that it was only the acts of their members that were reprehensible? He pointed out that article 4 of the Convention required organizations of that kind to be declared illegal as such.

Information was required on whether there were groups in Belgium which advocated xenophobia and, if so, what action the Government was taking against them.

20. In connection with article 5 of the Act in question, he noted that, according to paragraph 25 (a) of the report, associations combating racial discrimination could go to court if they had "had legal personality for at least five years", which seemed a long time. It would be useful to know whether any legal action had in fact been taken by such organizations.

21. Article 5 of the Convention referred to the question of the right to vote in local elections, a subject dealt with in paragraphs 60 to 66 of the report, from which it emerged that the granting of such a right to nationals of other European Community countries was under consideration. What was the situation regarding other aliens? That was a problem that would certainly arise in other countries of the European Community. Although article 1, paragraph 2, of the Convention stipulated that the Convention did not apply to distinctions made by a State party between citizens and non-citizens, the Convention did apply, according to paragraph 3 of the same article, whenever there was any discrimination against a particular nationality.

22. In paragraphs 67 to 70 of the report, concerning representation through advisory councils and other forms of participation in public life at the local level, reference was made to several aliens advisory bodies; while those were certainly commendable initiatives, he wished to know whether they actually worked. He also wished to know what were the "other forms of participation" by foreigners in public life at the local level.

23. The report went on to deal with access to employment in the public service. According to paragraph 74, the communes could hire foreigners on a contractual basis. Did that apply only to nationals of countries of the European Community, or to persons of other nationalities as well? With regard to aliens' freedom of opinion, assembly and association, dealt with in paragraphs 80 to 85, he asked what restrictions to those freedoms were provided for under the Act of 15 December 1980. Reference was made to some of those restrictions in paragraph 83, but it would be useful for the Committee to know whether there were any others.

24. On the subject of social legislation concerning migrant workers, he asked in what cases the professional identity card referred to in paragraph 88 of the report was granted or withheld. That was a particularly important point since it emerged from paragraph 89 that it was an offence for a foreign worker not to be in possession of such a card.

25. By way of general comment, he said that it appeared from a study entitled "Measure for Measure" by Ian Forbes and Geoffrey Meade of Southampton University that there was widespread racial discrimination in the countries of the European Community. That study, presented as a comparative analysis of measures taken to combat racial discrimination in the member countries of the European Community, showed that, unfortunately, little progress had been made in that respect and that, to many people's minds, racial discrimination was still a normal way of behaving. It would be useful, in connection with article 5 of the Convention, for the Committee to have more detailed

information on the situation in various areas in which racial discrimination might occur. Some information was given at the end of the report, on measures in the areas of housing and health, but it was insufficient.

26. With reference to article 6 of the Convention, the report provided some interesting data. In paragraph 116, for instance, there were statistics on complaints lodged for acts based on racism and xenophobia. It was reported that 1,269 complaints had been lodged between 1981 and 1989, of which 977 had been dismissed without further action, while 12 had led to convictions. That inevitably prompted the comment that the proportion of complaints shelved seemed very high compared with the number of convictions.

27. Finally, he noted that the implementation of article 3 of the Convention, concerning racial segregation and apartheid, was not dealt with in the report, even though the latter covered a period of eight years.

28. Mr. BANTON said that he would have liked the eighth periodic report of Belgium (CERD/C/194/Add.3) to have included, for the reader's convenience, a list of the various annexes referred to in paragraph 3 (c).

29. Referring to paragraph 11, he asked whether the Act of 30 July 1981 also protected citizens against discrimination - for instance, if a Flemish landlord refused to let a room to a Walloon.

30. The statistics in paragraph 116 were somewhat confusing. The total number of complaints for acts of racism or xenophobia should be given year by year so that it could be seen how many complaints had been examined, abandoned, found admissible and acted upon. He was surprised, moreover, that the number of complaints had decreased over time, whereas the number might have been expected to increase as the Act came to be better understood by those it was intended to protect.

31. He also asked for examples showing the kind of protection furnished to complainants. The case of a complaint which had been rejected because a public invitation excluding "wogs" had not been regarded as insulting raised doubts as to the effectiveness of the protections provided. Generally speaking, a total of fewer than 200 complaints a year was astonishingly low. It should be pointed out that, according to a study of the approximately 1,000 complaints per annum in the Netherlands, those complaints represented only the tip of the iceberg. It had been calculated that in the United Kingdom there were about 10,000 cases of racial discrimination a year in the recruitment to employment alone. Should there not be an investigation in Belgium of the true incidence of discrimination and the obstacles which prevented victims from making use of the remedies at their disposal? The Belgian Government might usefully learn from the experience of other European States in that respect.

32. From paragraph 25 onwards, the report dealt at length with the implementation of article 5 of the Convention. It failed to say, however, whether Belgium had eliminated racial discrimination before the courts and in respect of security of person, and, if so, in what manner. There were some remarkable omissions in that part of the report regarding economic, social and cultural rights. How were people protected against racial discrimination in respect of their rights to free choice of employment, equal pay, trade union

membership and housing? Apparently, the National Labour Council had concluded new agreements which were to become law with the issue of a new royal decree; he wished to know whether that decree had been promulgated and how it was proposed to monitor its implementation.

33. Regarding employment in the public service, dealt with in paragraphs 74 to 76 of the report, he asked whether a non-European Community alien could be employed in a subordinate position, for example in the postal service or the fire or prison services. Were there any statistics on the extent to which such services were implementing the policy for integrating aliens or their Belgian-born children into the labour force?

34. After expressing his regret that there was no reference in the report to article 6 of the Convention, he noted that there had been a call for the setting up of a national centre for the integration of immigrant communities, similar to the CRE in the United Kingdom and the LBR in the Netherlands. It would be useful for the Committee to know what had been done to follow-up that proposal.

35. Drawing attention to article 2, paragraph 1 (e), of the Convention, under which each State party "undertakes to encourage ... integrationist multi-racial organizations and movements ...", he asked for information on organizations of that kind in Belgium and the part they played in policy-making.

36. He also referred to a widely publicized case which had occurred in 1987, in which a refugee from Burundi had been murdered by "skinheads" in Louvain. He would like to know what lessons the authorities had learnt from that case and what measures had been taken to avoid a recurrence of such acts.

37. Referring finally to the provision in article 1, paragraph 2, of the Convention to the effect that the Convention did not apply to distinctions made by a State between citizens and non-citizens, he pointed out that that was not so in the case of employers and expressed the hope that the question of protection against discrimination in employment would be more amply dealt with in future reports.

38. Mr. van BOVEN said he was pleased to have the opportunity to consider the case of a neighbouring country, which would not prevent him from voicing criticisms where necessary. Previous speakers had already made detailed and highly judicious comments, pointing out, for instance, that the previous report dated from 1983 and that an eight-year lapse was far too long. It was true that there were sound reasons for the delay, and he hoped that the next report would be submitted within the prescribed time-limit.

39. Although the report dealt very comprehensively with the de jure situation in Belgium, it left much to be desired as far as the de facto situation was concerned, although some concrete issues did emerge here and there, particularly in the section on immigration policy. The Belgian delegation had described the role of the courts and the place of the Convention in the Belgian legal system, but it would have been very useful for the Committee to be given some information on case law; some of the cases referred to in the report were puzzling, and it would be helpful if the relevant case law were better described in future reports.

40. With regard to the situation in practice, Mr. Sant Angelo had referred to serious dilemmas facing not only Belgium but also the other countries of western Europe. In that connection, the establishment of the Office of the Crown Commissioner for Immigration Policy was a sound initiative. That body would be called upon to deal with such delicate matters as that of concentrations of migrants: should the policy to be adopted in that regard aim at distributing such persons evenly throughout the country or keeping the communities together? Paragraphs 156 and 158 of the report referred to some of the Crown Commissioner's recommendations on education and housing, and it would be useful for the Committee to be informed, either immediately or possibly in a year or two, of any follow-up to those recommendations.

41. Mr. Ferrero Costa had already spoken, in connection with article 4 of the Convention, about the problem of racist groups or organizations. On that subject, the conclusions of a report by a European Parliament commission of inquiry into fascism and racism in Europe, dating from 1985 but still relevant today, found that there was a large number of racist groups in Belgium, both in the Walloon region - Nouvelle Sparte, Ordre Noir, Front National, etc. - and in the Flemish region, where the Vlamse Blok, in particular, had made a disturbing breakthrough in the November 1991 elections after a xenophobic campaign. According to the report before the Committee some of those groups had been banned as paramilitary organizations but in 1982 a Belgian court had lifted one of those bans. The spectacular growth of movements of that kind was a matter of serious concern. In the circumstances, what was the Belgian Government's position, with reference to article 4 of the Convention, concerning overtly xenophobic and racist groups? Of course, Belgium did not have the monopoly of such problems, which were to be seen all over Europe, in the west and the east alike.

42. Regarding the right to education, he noted that there were independent subsidized schools in Belgium, many of which were religious schools. Most of them were Christian, but were there also Islamic schools in the Muslim communities settled in Belgium and were they also subsidized? In the case of those communities, religious and racial issues overlapped to a great extent.

43. The European Council, meeting in Maastricht in December 1991, had adopted a declaration on racism and xenophobia, in which it had noted with concern that there were growing signs of racism and xenophobia in Europe, both within the European Community and outside it. The European Council had emphasized that it was more than ever the duty of States to combat discrimination in accordance with their commitments within the United Nations, and, in particular, under the Convention on the Elimination of All Forms of Racial Discrimination. Specifically, the European Council had requested the Ministers and the Commission of the European Communities to step up their efforts to combat discrimination and xenophobia and to strengthen the legal protection of nationals of non-member States on the territory of member countries.

44. Finally, he wished to know whether Belgium was intending to make the declaration provided for in article 14, paragraph 1, of the Convention. The declaration was admittedly optional, but since the European Council had requested its member States to strengthen their legal protection arrangements for persons who were victims of discrimination, it would be logical for all

those who had not yet done so to make that remedy available to persons or groups of persons claiming to be victims of discriminatory practices covered by the Convention.

45. Mr. de GOUTTES thanked the Belgian delegation for its oral introduction to a report which, although late, contained much interesting information. The problems referred to by Belgium were very similar to those encountered in France, and he would have liked to ask a great many questions, but would confine himself to just a few. In particular, he would not speak about the very important issues concerning the various communities and regions of Belgium, as they had already been mentioned.

46. His first question, relating to article 4 of the Convention, concerned domestic legislation. Paragraph 12 of the report (CERD/C/194/Add.3), which listed the offences provided for under Belgian legislation, seemed to omit two serious offences covered by the Convention, namely, on the one hand, propaganda based on ideas or theories of superiority of one race or the dissemination of ideas based on racial superiority or hatred, and, on the other, the offence known as revisionism, committed by those who disseminated historical data denying, in particular, the crimes of the Nazi regime.

47. Paragraphs 34 et seq. of the report showed how difficult it was for Belgium to solve the refugee problem. In particular, subparagraph (b) of paragraph 39 described a restriction which seemed to be based on a quota system. He would like to have details of the number of persons who had been denied entry under that restriction. Subparagraph (d) of the same paragraph concerned the administrative maintenance, in places near airports, of asylum-seekers said to have entered Belgium by irregular means. That was a problem which arose in many countries: while investigations were being carried out into the status of the persons concerned, in what kind of place were they kept and what remedies were available to them? It seemed doubtful that it could be asserted a priori, as was done in the report, that those asylum-seekers had entered the country by irregular means; such an assertion could only be made a posteriori.

48. With regard to the Islamic religion, paragraph 95 of the report mentioned a Technical Committee which had been set up on the recommendation of the provisional Council of Elders in order to find a solution to the problem of the appointment of teachers of the Islamic religion; it would be interesting to know the initial findings of the work of that Technical Committee. Similarly, had the Belgian Government had occasion to take a decision on the delicate question of the wearing of the Islamic veil in schools?

49. Regarding judicial proceedings following complaints of racist acts, the report provided comprehensive statistics; they were only figures, however, and no actual cases were described. As other speakers had said, it might be asked, for example, why there had been so few convictions when the number of complaints was very high. Possibly the complaints were not well formulated or the plaintiffs insufficiently well-informed; there might also, as in other countries, be some reluctance on the part of the judicial authorities to prosecute and convict persons committing that kind of offence.

50. Finally, the situation of immigrants was a matter of concern to all the States of western Europe. It was interesting to note that the basic policy of Belgium in that regard was integration. However, some social indicators of non-integration were needed so that the Committee could appreciate the real situation of minority groups. Rates of unemployment, delinquency, alcoholism, drug addiction, prostitution, etc. were unfortunately, as everyone was aware, very reliable indicators of the extent of those groups' maladjustment to the rest of society, and it would be useful to have them.

51. Mr. WOLFRUM considered the recent constitutional reforms in Belgium to be particularly interesting and an invaluable means of easing tensions between the various population groups. Their implementation could be most instructive for other countries, and their content should be made known, especially to the countries encountering similar problems.

52. Mr. Ferrero Costa had already asked for details of the composition of the population in Belgium. Some general information was provided in that regard, but no details were given about the smallest groups such as, for instance, the German-language group, whose situation had been greatly imprpved by the recent reforms, or gypsies and persons from former Belgian colonies, whose situation was not mentioned.

53. Judging from the content of paragraphs 21 and 22 of the report (CERD/C/194/Add.3), it was with considerable reluctance that Belgium considered dissolving organizations that were contrary to article 4 of the Convention. The report was rather difficult to understand in that connection; in particular, why was Belgium, which was prepared to restrict freedom of speech, not prepared to impose the same restrictions on freedom of association? He also wished to know whether the authorities were able and willing to take action, where necessary, against certain political parties.

54. Had the Belgian Government made efforts, within the European Community, to combat racism everywhere? It had been affirmed at the beginning of the meeting that the fight against racial discrimination was a common concern and a joint responsibility: was Belgium prepared to invoke article 11 of the Convention to draw attention to violations committed by other States, and, for instance, to use that means against certain countries which, in Europe itself, did not comply with the Convention?

55. Mr. DIACONU said that Belgium's experience was particularly interesting; its system of regions and communities with their own deliberative and executive bodies made it a State that was no longer unitary but was not quite federal. The reforms described in the report showed that Belgium was undergoing constant change and that it was a laboratory whose achievements, particularly from the standpoint of human rights, could be useful in some ways to others.

56. The Convention had been adopted in 1965; since then, many events had occurred in Europe and throughout the world, and some of them had prompted reactions in Belgium and elsewhere. Migratory flows and the arrival of large numbers of foreigners had had a significant impact; the elections held recently in Belgium had been highly charged and it was necessary, in such a political climate, to take action to guarantee human rights and non-discrimination. The various regions and communities had direct

legislative powers that were so broad that there might be discrepancies between them. One community might adopt a more advanced system than another and he therefore wished to know how the Belgian State intended to ensure that there would not be unduly great differences or incompatibilities between the racial discrimination provisions applied in the three regions.

57. The question of the banning of organizations advocating discrimination had been mentioned. In that connection, article 1, paragraph 4, of the Convention did authorize "positive discrimination" in favour of certain groups under certain conditions; were there any provisions of that kind in Belgium, and for the benefit of which groups?

58. Finally, the very interesting question of different treatment of nationals of European Community countries and other aliens had been raised. It was worth noting that, from a legal standpoint, the countries of the Community would increasingly constitute a single State entity, and it was conceivable that by the year 2000 the periodic reports would be submitted by the Community itself rather than by its member States.

59. Mr. ABOUL-NASR, returning to the idea of joint responsibility referred to by Mr. Wolfrum, said that the provisions of article 2, paragraph 1, and article 11, paragraph 1, of the Convention, taken in conjunction, placed States parties under the obligation to draw the Committee's attention to situations elsewhere which they regarded as violating the Convention. Belgium must therefore be asked not only whether it intended to make the declaration provided for under article 14, but also, given its determination to report human rights violations in Iraq to the Security Council, whether it would give the same attention to other cases of human rights violations, especially cases of racial discrimination, occurring in Europe and other regions.

60. Mr. SONG Shuhua asked whether the Belgian customs authorities took discriminatory action against refugees according to their region of origin, and to which legal provisions those authorities were subject when they committed violations in that regard. He also asked what differences there were between the situation of nationals of States members of the European Community and that of nationals of other States, in respect of employment, living conditions, etc. Were those differences the cause of conflicts between those two categories of aliens?

61. Mrs. SADIQ ALI wished to know, firstly, how many Zairian exiles there were in Belgium and what their status was and, secondly, whether there was any provision for human rights education and training programmes for magistrates, police officers and other public officials dealing with immigrants.

62. Mr. AHMADU asked whether Zairian nationals in Belgium were treated in the same way as other aliens, or differently. Referring to the difficulties encountered by Nigerians in obtaining a visa for entry into the BENELUX countries, and the fact that it was easier to obtain it from the Netherlands Embassy than from the Belgian Embassy, he wondered whether it was a question of covert discrimination or of an irrational division of labour.

63. Mr. RECHETOV thanked Belgium for the realistic, self-critical approach which its report revealed. He endorsed the view of Belgium as a sort of

laboratory for the transition of a State from a unitary to a federal structure and he pointed out that the Belgian experience could have avoided bloody conflict in a certain European State.

64. He asked the Belgian delegation, considering the fact that its country did not recognize the existence of national minorities, what Belgium's attitude was to the obligations deriving from the many provisions of international legal instruments concerning the rights of national minorities. He associated himself with earlier speakers' requests for information on specific case law.

65. Mr. YUTZIS said he wondered what exactly was meant by the second part of paragraph 22 of the report. He would like the Belgian delegation to state clearly whether or not the judicial authorities could order the dissolution of associations advocating racism and xenophobia.

66. Mr. GARVALOV said that Belgium's experience was of great interest to the European countries currently undergoing far-reaching changes. He would like to know whether international human rights instruments were directly applicable in Belgian domestic legislation and, if not, what kind of juridical procedure, if any, was provided for in order to ensure their implementation. He did not understand how ministers of religion could be appointed when there was a separation of the Church and the State. He was also surprised to see, among the countries that had not made the declaration provided for under article 14 of the Convention, a European State which was a member of the Council of Europe and had ratified the European human rights Convention and recognized the competence of the European Court. He hoped that Bulgaria, which had recently been admitted to the Council of Europe, would recognize that competence and would make the declaration under article 14 of the Convention. In conclusion, he pointed to the need to develop a definition of the term "minorities".

67. The CHAIRMAN said that Committee members' questions and comments on the report of Belgium showed how interested they were in the very detailed Belgian report, and trusted that the Belgian delegation would be kind enough to respond.

68. He also announced that he would be distributing to the members of the Committee the text of a study entitled "Actualité du Comité des Nations Unies pour l'élimination de la discrimination raciale" which Mr. de Gouttes had published in the Revue générale de droit international public, 1992.

69. Mr. de GOUTTES urged Committee members likewise to circulate any articles they might have published.

The meeting rose at 5.55 p.m.

CERD/C/SR.940
10 August 1992

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-first session

SUMMARY RECORD OF THE 940th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 4 August 1992, at 10 a.m.

Chairman: Mr. VALENCIA RODRIGUEZ

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7) (continued)

Fifth, sixth, seventh and eighth periodic reports of Belgium (CERD/C/194/Add.3) (continued)

At the invitation of the Chairman, Mr. Reyn, Mr. Sant'Angelo, Mr. Van Craen and Mr. Wilmotte (Belgium) took places at the Committee table.

1. Mr. VAN CRAEN (Belgium) welcomed the opening of a dialogue between his country and the Committee, a dialogue which he hoped would lead to better mutual understanding. A number of members had asked for detailed statistics on points arising from the report: although his delegation could not provide them at the current session, it would be glad to supply them in writing at a later stage. The delegation would, of course, be most interested to hear the Committee's final conclusions and recommendations on the report.

2. Mr. WILMOTTE (Belgium) said that, for the sake of clarity, he would reply to questions raised according to subject, since the same questions had been put by more than one member.

3. One of the more important questions had concerned the relationship between international treaties on human rights and fundamental freedoms and Belgian domestic law. In principle, once Belgium had signed such a treaty, it would become law following ratification by Parliament: the difficulty arose over the fact that certain provisions of the treaty would automatically become directly applicable (or "self-sufficient") in Belgian law, whereas others would not. Where it was clearly stated in the text of the treaty that the provision concerned had a direct effect, it could be invoked before any Belgian court. However, where there was no such indication, it was for the courts to determine whether or not the provision was directly applicable.

4. The principle governing the issue was clear: jurisprudence dating from 1971 had established that wherever a provision of an international treaty had a direct effect, not only was it applicable in Belgian law, but judges would be required to implement it even if a subsequent law were to conflict with it. Thus, an adjudication by the Supreme Court in 1984 had recognized that virtually all the provisions of the Covenant on Civil and Political Rights were directly applicable in Belgian domestic law.

5. Clearly, however, most of the provisions of the Convention with which the Committee was concerned were not "self-sufficient", and thus the Belgian legislator had to take certain measures to give them direct effect. One such measure had been the 1981 Act on the prevention of acts of racism and xenophobia, which had been discussed the previous day. He could assure members of the Committee that all the provisions of treaties on human rights and fundamental freedoms would be made directly applicable under Belgian law through the adoption, where necessary, of special legislation of that kind.

6. Another question had concerned the status in Belgium of nationals of European Community countries as compared with that of nationals of other States. Under the Treaty of Rome, European Community law was supranational,

which meant that where international treaties were concerned sovereignty was transferred from the Belgian Government to the supranational authority vested in the European Community. Thus the right of workers to freedom of movement was recognized only for nationals of European Community States, and not for nationals of other States. Under the Treaty of Maastricht, the same principle applied to the right to vote and to stand for election: only nationals of European Community States were recognized as enjoying such rights, although there was nothing to prevent individual member States from conferring them on nationals of other countries resident in their territory. In his view, that situation did not constitute discrimination, but rather a system of differential treatment which was justified by the need to give priority to the objective of furthering European integration.

7. In reply to the question as to what was meant by "local elections" (para. 60 of the report), he said that the reference was to elections held in municipalities or small local communities as distinct from, on the one hand, national parliamentary elections, or on the other, regional or European Community elections.

8. In reply to the question on constitutional freedoms, article 128 of the Constitution enshrined a fundamental principle, namely that any alien on Belgian territory should enjoy the protection normally accorded to persons and property. Derogations from that principle implied in the phrase "save for the cases prescribed by law" were in fact extremely rare, the most significant one being that relating to the right of aliens to enter or leave Belgian territory. It was only to that extent that a discriminatory regime operated.

9. With regard to political, social and economic rights, discrimination was now practically non-existent. Previously there had been some discrimination in regard to social security benefits against Turkish and Moroccan nationals who had lived in Belgium for most of their lives, but that discrepancy had now been remedied. Aliens enjoyed exactly the same rights as Belgians where participation in trade union activities was concerned. They could not only vote in works councils and health and safety committees, but could also be elected to such bodies: the latter was an important point, since in Belgium the trade unions played an active part in framing social legislation through collective labour agreements.

10. On the subject of work permits, any foreigner on Belgian territory had to obtain prior authorization before taking up employment, a requirement which did not apply to European Community nationals or to persons with recognized refugee status. In regard to the penalties imposed for failure to obtain a work permit, a distinction should be made between the self-employed or independent worker, who would be individually penalized, and the salaried worker: in the latter case, it would be the employer, not the employee, who was penalized.

11. A number of questions had been raised concerning Belgian practice in regard to refugees, notably under the 1991 "double percentages" Act. Under that Act, it was assumed that, on the basis of a twofold criteria, nationals of certain States could be deemed not to qualify for refugee status as defined in the Geneva Convention. The first criterion was whether, in the course of the preceding year, nationals of the country concerned had constituted more than 5 per cent of the total number of asylum-seekers, and the second

criterion was whether fewer than 5 per cent of such nationals had been granted refugee status. It was important to note, however, that if the individual applicant could produce evidence that his life and liberty had been endangered in his country of origin, the assumption would be reversed, and the individual would qualify for refugee status. It should also be noted that even if the applicant came from a country whose nationals did not a priori meet the definition of a refugee under the Geneva Convention, he would nevertheless be entitled to appeal on the same basis as other asylum-seekers.

12. He was not yet able to provide any statistics, since the measure in question had only become law in July 1991, and in any event was only applicable for a one-year period. An application for the repeal of the measure was currently under consideration, and as a result the Belgian authorities were being very cautious about implementing its provisions. It should be realized that the law would only be applied in association with other procedures, and not in isolation.

13. Where the meaning of "irregular entry" was concerned, Belgian law differentiated between asylum-seekers requesting refugee status according to whether or not they were in the possession of the necessary documents, namely passports or visas. Persons who could present the proper documentation would be allowed into the country and would then go through the necessary formalities, but those who could not were subjected to a preliminary investigation at the border. If the investigation found that the application was clearly abusive, the asylum-seeker would be refused entry, but if it found that his case deserved further consideration, he would be admitted.

14. That system had led to a situation in which asylum-seekers had been delayed in transit zones for long periods, often under deplorable conditions. Accordingly, it had been decided to set up reception centres at airport border points, and in 1991 legislation had been passed limiting the duration of detention in such centres to a maximum of two months. Thus, if after two months the applicant had not been returned to his country, or if consideration of his case had not been finalized, he would automatically be admitted.

15. With regard to discrimination against asylum-seekers at the border, frontier Customs officials and law enforcement agents had no decision-making powers: their function was simply to take note of applications and to transmit them to the authorities. It was true that complaints had been made to the Belgian Government of discriminatory treatment on the part of certain frontier officials, and an inquiry was now under way. In the meantime, steps had been taken to improve the training of such officials, so that their role was more clearly defined.

16. In reply to further questions, he said that out of Belgium's total population of some 10 million, there were 64,000 German-speaking Belgian nationals. In 1991 there had been almost 14,000 Zairian nationals resident in Belgium, a figure which represented only 1.5 per cent of the total resident foreign population, although in view of Zaire's historical links with Belgium a higher percentage might have been expected. In the year 1988, Zairian nationals had accounted for 10 per cent of all asylum-seekers: in 1989 the figure had been 10 per cent, in 1990, 8 per cent, and in 1991, 13 per cent. Zairians were accorded the same treatment as asylum-seekers who were nationals of other non-Community States, but in view of the events that had taken place

in the country in 1991-1992, the Belgian Government had decided to suspend any removal measures against Zairian nationals (with the exception of those guilty of offences under the ordinary law) pending clarification of the situation.

17. On the matter of visas required by foreign nationals to enter Benelux countries, Belgium's policy was identical to that of its Benelux partners, namely the Netherlands and Luxembourg. The regulations governing the issue of such visas were the same in all three countries, apart from the fact that applications to enter, for example, the Netherlands, would normally be handled by Netherlands consulates and embassies. The treatment of applicants would vary only to the extent that the issuing of visas might take longer in some cases than others, owing to local conditions.

18. Mr. SANT'ANGELO (Belgium) said it had been asked whether the 1981 Act on the prevention of acts of racism and xenophobia applied also to Belgians: the answer was in the affirmative. Thus, a court had recently convicted a youth for using the term "dirty Belgian". If the action concerned involved the race, colour or national or ethnic origin of either Belgians or naturalized Belgians, the Act would apply. It had been introduced partly in order to combat acts of racial discrimination committed against Belgian Jews.

19. While the requirement that the action concerned should be public might be seen as constituting a restriction, the intent of the law was not to eliminate racism, but rather to punish acts of incitement to racial hatred and violence, acts which would necessarily be public in character. For example, a café in Namur had recently refused to serve a Moroccan national, but since there were no witnesses, the individual concerned could take no action. When he had later returned with witnesses and the same incident was repeated, he had brought an action, which had subsequently been allowed on appeal to the court in Liège. In Belgium, as in most other countries, the principle of freedom of expression was sacred and was enshrined in the Constitution, and great caution had to be exercised in allowing any derogation from that principle. Thus, the Act contained stringent requirements as to proof of racist or xenophobic acts.

20. Recapitulating the facts of a case in which a war veterans' association had issued an open invitation to a social event in its newsletter, using the equivalent of the expression "Everyone welcome; no wogs" ("bougnoules"), he said that for some reason the preliminary investigation conducted at the time had found that there was no evidence of racist intention. It had been an isolated case, however, and subsequent court rulings had found that the term "bougnoule" was racist. Anyone using it could now be prosecuted.

21. Regarding associations manifestly and repeatedly promoting or inciting racial discrimination, proof of intention was again required. Legal proceedings could be brought only against physical persons, as opposed to legal entities, the intent of the legislators being to undermine the existence of such associations through action against individual members guilty of racist acts or incitement. There was, however, a legal provision dating back to 1934 providing for the dissolution of paramilitary associations. Various racist and paramilitary associations had been dissolved and individual members convicted under that law.

22. The provision of a five-year period before an association could bring legal proceedings was intended to prevent the establishment of an association in connection with a particular case.

23. In response to a question by Mr. Banton about the 1981 Act, he said that it was intentionally very broad in scope so as to empower the judiciary to deal with all situations referred to it. For instance, although "revisionism" and "negationism" were not explicitly referred to in the Act, he could quote the example of a French historian who had been condemned twice for propagating his "negationist" theories of history in Belgium.

24. A Senate proposal to amend the 1981 Act had been introduced at the beginning of 1992, with a view to making it more effective. The proposed amendments included stricter penalties; making the refusal to allow occupation of a dwelling a punishable offence; broader provisions for prosecution in the event of discriminatory offers of services or publicity; and new provisions concerning the refusal to employ a person, or dismissal, on grounds of origin, race, colour and so on. The prohibition of discrimination in the workplace was already provided for under collective labour agreements. In all cases, it should be noted that proof of racist intention must be adduced.

25. On the question of minorities, Belgium, with its current population mix, did not recognize minorities as such. Associations and organizations representing particular groups could, of course, be formed and were encouraged, even receiving subsidies, provided their activities were not contrary to the interests of the general community. Such associations and organizations were very active in Belgium. The general emphasis in Belgium, given the present trend towards a multicultural society, was to encourage individual integration into the community. In more general terms, Belgium would have no problem in ratifying an international convention on minorities, especially since the terminology proposed referred to individuals belonging to minorities.

26. Any State could grant certain rights to its nationals that it did not grant to non-nationals, the justification being that such rights - particularly certain political rights and those concerning military service - were based on the special link between nationals and their State. Provisions regarding affirmative action or what Belgium preferred to call "positive action" were not intended to give foreigners certain advantages not enjoyed by Belgians, but to ensure that all persons could take an active part in society. Such action was taken, for example, in employment.

27. With regard to Mr. Banton's questions about paragraphs 74 to 76 of the report and access to public service posts, proposals giving non-nationals access to certain established posts in the civil service had not yet been adopted, but at the national level, non-nationals could hold public service posts under renewable contracts. Posts at the Community level were open to everyone irrespective of nationality. A growing number of public service departments or "parastatal" authorities, such as the public transport authority, were open to non-nationals, and recent measures had been taken to open up recruitment in such areas as the police auxiliary forces. Representation of foreigners through advisory councils, described in section B

of the report, was actively ensured at the Community and local levels, ensuring participation by foreigners in local management, either as individuals or as members of associations.

28. On the subject of education, there were unfortunately some schools attended primarily or even exclusively by non-Belgians, as a result of a concentration of foreign residents in the areas concerned. Steps had been taken in recent years to improve the situation, not specifically to "deconcentrate" the areas in question but to promote equality of educational opportunity and improve teacher training. The Community authorities, which were responsible for education, encouraged intercultural education in all schools, particularly by introducing intercultural subjects into the curriculum.

29. Special training programmes had been introduced in recent years for administrative personnel, such as members of the police force and local authorities, to make them more sensitive and responsive to people with different lifestyles and cultural backgrounds.

30. With regard to the Islamic religion, the report requested of the Council of Elders referred to in paragraph 95 of the report was currently being examined, and it was hoped that the outcome would resolve the problems concerning the appointment and payment of ministers of the Islamic religion on the same footing as those of the other religions, in conformity with Belgium's pluralistic policy. Those problems had arisen because there had until recently been no recognized authority representing all Islamic communities which the Government could consult. There was at present one subsidized Islamic school, a nursery school, and it was expected that the number would increase in the future. There was no official ban on wearing the Islamic veil at school, the only possible exception being schools in which pre-existing rules prohibited the wearing of any kind of distinctive religious emblem or dress, of which parents would have been aware before enroling their children. Such rules must, of course, be in conformity with anti-racist legislation.

31. In the health sphere, measures had been taken to facilitate relations between foreign patients and medical staff, such as the provision of interpretation in hospitals and special training for medical personnel.

32. Low-cost housing was available for all underprivileged sectors of society without discrimination, and tenants' associations were encouraged.

33. In response to questions about the activities of extremist parties, he said that extreme racist groups were covered by the 1981 Act, but that, in general, the Government's policy was to tackle the problem by seeking to influence those who voted for such parties, fostering attitudes of tolerance and understanding. On the subject of the appointment of a Crown Commissioner for Immigration and the creation of a national centre for the integration of immigrant communities and against discrimination, a draft law had already been through a first reading and it was hoped that the centre would commence operation in 1993. It would be responsible for research and documentation and would provide advice and make recommendations to the authorities on the application of the 1981 Act and any other means of action against all forms of racial discrimination, an example being the application of a code of conduct in the workplace. It would help to publicize the 1981 Act both in the

Community at large and among those professionally concerned with implementing national legislation and the International Convention on the Elimination of All Forms of Racial Discrimination, such as judges and magistrates. It was to be directly accountable to the Office of the Prime Minister, to which it would be required to report annually, and would also be the body responsible for reporting to the Committee on the Elimination of Racial Discrimination.

34. Mr. VAN CRAEN (Belgium) said that he would be responding to some of the questions of a more general nature raised by Committee members. On the subject of the State reform, he was gratified to hear the Committee's laudatory comments, although it must not be forgotten that the reform in itself did not provide a direct response to all the issues dealt with by the Committee. The Belgian State was responsible to the international community and must guarantee the fulfilment in practice of all its commitments through all the autonomous structures that had been set up. Regarding the manner in which the system operated in practice, there were three Communities, the Flemish, the Walloon and the German-language Community, each of which had its own powers in regard, broadly, to culture, education and policies concerning groups of persons such as young people, the elderly, etc. The German-language Community, like the other two, was not considered to be a minority, but had equivalent powers and mechanisms. Then there were three Regions: the Flemish Region, the Walloon Region and the Brussels-Capital Region, which was bilingual. All those entities had their own mechanisms similar to those operating at the national level, with an executive power, a legislative power and a certain degree of financial autonomy. The whole system was based on the fundamental concept of "linguistic territories", of which there were four - the Flemish, Walloon, German-language and bilingual territories. It was in the frontier areas between those linguistic territories that problems might arise, and it was there that special arrangements had been devised to ease or facilitate transition and adaptation from one territory to another.

35. Several questions had been asked about how Belgium's commitments towards the international community were guaranteed in such a context of divided authority. Belgium complied fully with all its commitments and had internal mechanisms for that purpose. Its policy could be summed up in one word: "dialogue", which was a continuing process operating between the Communities and the Regions and between them and the Belgian State. Consultation and coordination committees (comités de concertation) operated at all levels for that purpose. Of course, not all problems could be resolved through dialogue, but the Court of Arbitration had overall competence to deal with disputes. There could be no doubts about the Belgian State's responsibility for guaranteeing all its commitments to the international community.

36. Much had been said about Belgium's membership of the European Community, which was of long standing. In fact, Belgian foreign policy in respect of human rights and racial discrimination was in great part determined by participation in the Community and its institutions. In addition, Belgium had been a member of the Commission on Human Rights from 1986 to 1991, and was now represented in that body by an observer, and as a member of the Security Council, it had voted in favour of many resolutions condemning human rights violations.

37. With regard to article 14 of the Convention, and in particular its paragraphs 1 and 2, Belgium had shown its willingness to respond positively by

initiating (admittedly lengthy) procedures for incorporating those provisions in legislation. It should be pointed out that the European Community itself provided individuals with a variety of remedies in the event of grievance, including recourse to the European Court of Human Rights.

38. Outside the framework of the Community, an efficient system of protocols was available whereby financial arrangements with States could be suspended if human rights were abrogated.

39. In conclusion, he said that acceptance of the wider concept of European union would do much to help eliminate any discrimination against foreigners, a question that had also been raised in the course of the discussion.

40. Mr. FERRERO COSTA said that, as country rapporteur, he wished to compliment Belgium on the thoroughness of its eighth periodic report and the detailed replies given orally by its representatives. However, some points could usefully be amplified. In particular, more statistics on population would be welcome in the next periodic report, and greater information on complaints procedures: it was very important, for instance, to know more about the substance of complaints and the apparent discrepancy between the number of complaints and the number of convictions, and also about the way in which courts interpreted the Convention.

41. He welcomed the details given by the representatives of Belgium on the functions of the national centre for the integration of immigrant communities and against discrimination and on the proposed amendments to the Act of 30 July 1981. He pointed out that the Act did not cover all the obligations arising from the Convention, and expressed the hope that the Committee's views would be made known to legislators.

42. Little attention had been paid in the report to minorities which were not French- or Dutch-speaking, in particular to the ways in which they could ensure respect for their rights, or to the status of foreigners in a country in which some 9 per cent of the workforce was of foreign origin.

43. Mr. ABOUL-NASR said that he wished to correct any misapprehension that he was accusing Belgium of double standards in connection with human rights. What he had meant in his statement the previous day was that the Security Council, of which Belgium was a member, had been accused of such double standards - by the Secretary-General among others. Although the country itself had a good human rights record, it had an obligation under the Convention to use its influence to prevent the occurrence of violations elsewhere.

44. Mr. RECHETOV thanked the Belgian representatives for their candid replies to the Committee, and particularly to his query concerning the application of international human rights instruments in Belgium. Noting that the ratification process for such instruments appeared to be lengthy, he would like to know whether Belgium intended to assume an obligation under article 14 of the Convention.

45. Mr. WILMOTTE (Belgium) said that population statistics and information on such issues as complaints procedures and actual cases would be provided by the

end of 1992, well in advance of the next periodic report. With regard to article 14, he had been informed by his country's Ministry of Foreign Affairs that relevant legislation was pending.

46. On relations with South Africa, he said that Belgium had consistently pursued a common policy of opposition to apartheid with the other members of the European Community.

47. The proposed amendments to the 1981 Act were still at the stage of discussion in Parliament, but the Committee's comments would be duly noted and Parliament would be informed of the obligations arising under the Convention.

48. Mr. REYN (Belgium) said that he would need to consult with his Government to clarify Belgium's position on article 11 of the Covenant, although the existence of an obligation under that article was acknowledged.

Mr. Reyn, Mr. Sant'Angelo, Mr. Van Craen and Mr. Wilmotte (Belgium) withdrew.

Eighth, ninth, tenth and eleventh periodic reports of Greece (CERD/C/210/Add.1)

At the invitation of the Chairman, Mr. Ioannou and Mr. Iliopoulos (Greece) took places at the Committee table.

49. Mr. IOANNOU (Greece) said that the implementation of the Convention had already been outlined in earlier periodic reports, but that it would be useful to comment on the judicial machinery available in respect of racial discrimination. In particular, mention should be made of the provision in article 28, paragraph 1 of the Constitution, introduced in 1975, which affirmed that international instruments to which Greece was a party not only formed part of the law of the land, but took precedence over domestic legislation. In the event of a conflict, a judge must apply the relevant international provisions.

50. With the ratification of the Convention on the Elimination of All Forms of Racial Discrimination in 1970, judges were called upon to apply all of its provisions, since international instruments always took precedence over domestic legislation. Thus a legal framework existed under which violations of the Convention were treated as criminal offences. However, as Greek society was traditionally tolerant towards other races and groups, the legal machinery had not been put to the test, and no complaints of discrimination had been submitted to the national courts. In the event of any complaints arising, they would be dealt with by the Office of the Attorney-General.

51. With regard to South Africa and the sanctions against that country, Greece had ensured that its domestic legislation complied with Security Council resolutions. Similarly, as a member of the European Economic Community, it had fully complied with all action taken with respect to South Africa. Greece had ratified most international conventions prohibiting discriminatory behaviour and was in the process of establishing a separate service to deal with the international protection of human rights in general. Since 1985, it had accepted the right of individual petition to the European Commission of Human Rights, but few complaints had been brought before the

Commission. He was sure that, with the help of the new human rights body, Greece would be in a position to expedite the submission of its reports.

52. Mr. WOLFRUM, speaking as country rapporteur, said that Greece had submitted its eighth, ninth, tenth and eleventh reports in a single document, a document which did not fully comply with the Committee's guidelines for the preparation of reports. The information provided on judicial and administrative measures was limited and the information on the demographic composition of the population was only partial. The report failed to state how many foreigners were living in Greece and what their status was under Greek law.

53. He drew the Committee's attention to paragraphs 5 to 7, which dealt with constitutional matters, and to paragraph 8, which dealt with accession to international instruments, and referred to the safeguards for individuals and organizations included in the Greek Constitution. The report stated that, for the purpose of uniformity with the Convention, the prohibition of discrimination based on race had been added to the text of article 5 of the 1975 Constitution and Parliament had established a special regime for the punishment of acts or activities which could give rise to racial discrimination.

54. Legislation provided for imprisonment for a maximum term of two years or a fine. Cases of propaganda or activities of any nature giving rise to racial discrimination were also punishable by law. According to his information, article 192 of the penal code provided for a term of imprisonment of up to two years for anyone openly or otherwise disturbing the public peace by fomenting violence and division among citizens. He would like to know whether any cases had been decided under that provision and what specific charges had been brought against Doctor Sadik Ahmet and Mr. Ismail Serif in January 1990. Similarly, he inquired why no action had been taken to punish those who had initiated riots against members of the Turkish minority in 1990.

55. Greece was a party to the European Convention on Human Rights, to the second, third and fifth Additional Protocols, to the International Covenant on Economic, Social and Cultural Rights and the European Social Charter. It had shown its respect for the value of the human person by becoming a party to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Prevention and Punishment of the Crime of Genocide and the Slavery Convention. He believed that the Greek legal system was quite open to the implementation of international law, although paragraphs 10 to 12 of the report did not fully explain how the system worked. Under article 28 of the Greek Constitution, as a result of ratification and entry into force according to the established procedure, the generally recognized principles of international law and international conventions formed an integral part of internal Greek law and took precedence over any contrary provision of that law. The report indicated that judicial decisions had referred to that basic provision less in connection with possible conflicts with internal law than to emphasize that international law took precedence. The report failed to provide detailed information on that point.

56. It would have been useful for the Committee to know whether courts or administrative bodies had acted on the basis of the Convention on the

Elimination of All Forms of Racial Discrimination, or other international human rights instruments. If so, the report should have included details of any relevant case or cases and explained whether the international instrument had been used to modify Greek law or had served directly as a basis for action. He drew the attention of the representative of Greece to the fact that, under article 9 of the Convention, States parties had an obligation to report not only on their legal system but on the relevant practice of courts and administrative bodies.

57. Where the implementation of article 2 of the Convention was concerned, he complimented Greece on the abolition of a practice which had been previously criticized, namely the refusal to appoint Christian teachers of the Catholic faith to work in public primary schools. Act No. 1771 of 19 April 1988 authorized the appointment of persons of any religion or faith as primary school teachers in both nursery and primary schools. It would have been interesting to know how many teachers of non-Christian orthodox faith had been appointed and to which religion or faith they belonged.

58. In connection with the same articles, it would be useful to have precise figures for Muslims living in western Thrace. That minority, 50 per cent of whom were of Turkish ethnic origin, seemed to be dissatisfied with their legal position and had complained of discriminatory practices against them. Letters had been received by members of the Committee and although they had not been official communications under article 14 they had, nevertheless, influenced the members. Greek Muslims complained of harassment by Greek authorities, bureaucratic obstacles to obtaining permits for building and repairing houses, refusal of loans from State-controlled banks, to name but a few problems. Such complaints needed to be looked at in more detail. The conclusion of the Treaty of Lausanne of 1923, which had ended the Greco-Turkish war, had been accompanied by the signature of a convention providing for a compulsory exchange of population. However, two population groups had been excluded: namely Greeks living in Constantinople and Turks living in western Thrace. Since 1923, the percentage of Turks had dropped from 64 per cent (according to the Turkish authorities) or 51 per cent (according to the Greek authorities) to 33 or 36 per cent. So, at least 300,000 people of Turkish ethnic background apparently emigrated since 1923. He would like to hear an explanation for such a mass emigration.

59. The legal system of Greece did not seem fully to provide for equal treatment for all Greek nationals, since, under the Greek nationality Act of 1955, a person of non-Greek ethnic origin who left Greece, not intending to return, could be declared to have lost Greek nationality. It was not clear how the authorities could establish such an intention. He was also concerned that such a decision could be made by the Minister of the Interior without a hearing, judicial review or the right of appeal. He would like to know how many persons had lost their nationality under the provision.

60. Greek officials seemed reluctant to use the term "Turkish minority" and to prefer the term "Muslim minority". The belief that the word "Turkish" referred only to citizens of Turkey and not to citizens of Greece was widespread. He would like to know whether it was true that most Turkish associations in western Thrace had remained closed following a High Court decision in 1988 ordering their closure on the ground that the use of the term "Turkish" to describe Greek Muslims endangered public order.

61. The report provided very little information on the implementation of article 2, paragraph 1 (b), of the Convention, and on article 2, paragraph 2, of the Convention. With regard to the latter provision, the report stated that the teaching of the rules of Islam and of the Turkish language was part of the curriculum in 260 primary and secondary schools in Thrace, and that such instruction was free of charge. However, the Turkish minority had complained of restrictions on its religious freedom. It was, in particular, concerned about the appointment of muftis by the Minister of Religious Affairs.

62. The information on the school system needed to be supplemented. He would like to know how many of the schools where Turkish was taught were secondary schools, how many students were enrolled, whether it was necessary to pass a Greek language test for admission, and whether the true needs of Turkish speakers were being met.

63. With regard to the right to freedom of movement and residence within the borders of Greece, he would like information on the degree to which western Thrace was a restricted area and on the ensuing effect on the inhabitants of the area, especially Pomaks and members of the Turkish minority. Was it true that the Pomaks in the Rhodopes mountains were virtually living under military surveillance. Further information was also needed on the confiscation of passports, temporarily or permanently. The same applied to complaints that members of the Turkish minority were experiencing difficulties in obtaining a licence to buy or sell land, houses or businesses. Statistics were also needed for the percentage of members of the Turkish minority who owned property, in view of complaints from the Turkish community that land was frequently confiscated from Greek Turks but rarely from other Greeks.

64. Finally, further information would have been appreciated on the implementation of article 5 (c) of the Convention. The report contained little information on the electoral system and the number of members of minorities who were members of Parliament. He would also like to know what Greece's position was towards the former Yugoslavia and, particularly, to the demands of self-determination made by the Republic of Macedonia.

The meeting rose at 1.10 p.m.

CERD/C/SR.941
3 September 1992

ENGLISH
Original: FRENCH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-first session

SUMMARY RECORD OF THE 941st MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 4 August 1992, at 3 p.m.

Chairman: Mr. VALENCIA RODRIGUEZ

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7) (continued)

Eighth, ninth, tenth and eleventh periodic reports of Greece (CERD/C/210/Add.1) (continued)

1. Mr. SONG Shuhua congratulated the Greek delegation on the logical and concise report submitted by its country (CERD/C/210/Add.1), but said he would have welcomed additional information on a number of points. He wondered whether the three ethnic groups mentioned in paragraph 21 of the report were all Muslim, what proportion they represented in terms of the total population of the country and what their birth and death rates were. He also wondered what their economic situation was as compared with other population groups, whether implementation of the economic programme for Thrace referred to in paragraph 20 had begun and whether there were any Yugoslav or Albanian immigrants in Greece and, if so, what their status was.

2. He noted with satisfaction that universities and higher educational establishments had included study of the Convention in their curricula. He asked, in view of the waves of emigration in recent years, what the policy of the Greek Government was with regard to immigration. Were all immigrants treated in the same way, particularly at border posts and, if discrimination existed, what measures were being taken to combat it?

3. Mr. DIACONU stressed how important it was to know about the population structure of a country in order to form an idea of the real situation there in terms of discrimination, and he expressed the view that the Committee should make a recommendation to that effect to States parties. He wished to know whether the Muslim minority of Thrace was represented in Parliament and what role it played in political life. He also asked what the situation was with regard to the Albanian and Macedonian minorities?

4. Referring to paragraph 46 of the report, he wondered whether the fact of allowing a religious authority, in the circumstances the Muslim religious leader, to exercise judicial responsibility was not a source of discrimination and of many problems. He would moreover have welcomed further information regarding the matter of culture and education for non-Greek populations. It was not enough to say, for example, that Turkish language instruction was part of the curriculum. Finally, he expressed the hope that the question of minorities, which was complex to say the least in that part of the Balkans, would not be used for political ends in the future.

5. Mr. RECHETOV merely wished to point out to the Greek delegation that there were many different points of view as to whether or not the sensitive problem of self-determination should be considered in the framework of human rights protection.

6. Mrs. SADIQ ALI was concerned by the fact that under article 19 of the Greek Nationality Act, citizens, who were not of Greek ethnic origin, particularly Greek Muslims, could be deprived of their nationality, without any effective right of appeal if they went abroad to work or study. With regard to Macedonians, she wondered whether it was correct that in

August 1990, the Governor of a district in the region had organized cultural festivities in which a Macedonian group had been due to take part, but were prevented from doing so, and whether it was true that Greece did not recognize the Macedonian language, regarded as a dialect. She requested information on the language in which Macedonians received primary education. She also stated that it would be useful to know the names of the countries to which the bilingual persons referred to in paragraph 24 of the report belonged.

7. Mr. ABOUL-NASR began by pointing out that no State could claim not to have any problems with regard to discrimination. It was the Committee's responsibility to help overcome such problems. The question of the application of the provisions of Islamic law to certain aspects of civilian life was not of great concern, since Greece was far from being the only country in the world where such provisions were put into effect. With regard to the question of language, a problem only arose when an individual was deprived of the opportunity to learn his mother tongue. As far as he was aware, foreigners living in Greece, and in particular Egyptians, were experiencing no problems.

8. However, the report of Greece needed some clarifications. Firstly, it seemed to be confusing Turks and Muslims, a confusion which was widespread but none the less regrettable in that part of the Balkans. The term "Muslim" referred not to a nationality but to a religion. The breakdown of the Muslim minority given in paragraph 21 of the report was unclear: did the 50 per cent of persons of Turkish origin have Greek nationality? Who were the Pomakes, and were the Gypsies all Muslim? Did they have the same rights and duties as other citizens and, in particular, were they required to undergo military service?

9. Furthermore, what was the situation of the Albanian minority living in Greece? He wondered why it was not mentioned in the report and said that if it was true that Greeks were treated differently according to their origin, the Committee should devote serious attention to that matter.

10. Mr. de GOUTTES thanked the Greek delegation for its statement which was brief but went into considerable legal detail. Noting that for various historical, political and geographical reasons, the world expected a great deal from Greece in the area of human rights, he stated that there were some gaps in the report on specific points, particularly with regard to residual discrimination and the situation of minority groups. He hoped that such gaps would be filled in a future report.

11. He would have liked examples of associations that were reported to have been disbanded and of groups pursuing racist or discriminatory goals. With regard to paragraph 43 of the report, he inquired why the provisions providing for the punishment of racist acts had never been applied. Were citizens not sufficiently informed or was it because of obstacles in the way of access to justice or indifference or reluctance on the part of the judicial authorities? Given that Greece had replied to individual requests before the European Court and Commission of Human Rights and that no complaints of racial discrimination had been lodged with those bodies, he asked why Greece was not intending, in the near future, to make the declaration provided for in article 14 of the Convention.

12. Mr. van BOVEN emphasized the need, having regard to the diversity of national situations, for the reports of States parties to include as much information and clarification as possible and to be submitted within the prescribed time-limits. He was pleased to note that the procedure for the ratification by Greece of the International Covenant on Economic, Social and Cultural Rights was nearing completion and hoped that Greece would also ratify the two Additional Protocols.

13. With regard to Act 927/1979 promulgated pursuant to article 4 of the Convention, he wished that the Greek delegation would submit statistics or cite specific cases concerning its application. There were bound to be problems. He noted with satisfaction that the Act had been amended in 1984 so that it also covered discrimination on religious grounds.

14. Regarding the application of article 6 of the Convention, he wondered whether the remedies provided for under article 57 of the Greek Civil Code, which were intended essentially to protect the reputation of individuals, were not confined to too limited an area. Furthermore, he hoped that Greece was also actively planning to make the declaration provided for in article 14 of the Convention.

15. Having learned that persons had recently been tried and convicted for having published their opinions on Greek foreign policy and on the question of minorities which were not in accordance with those of the Government, he asked the Greek delegation whether that information was correct and whether it reflected the official position of its country.

16. Mr. GARVALOV said that it was known how much progress had been made by Greece on the road to democracy. With regard, however, to the incorporation of international instruments into domestic law, some ambiguity remained, as had already been observed by Mr. Wolfrum.

17. Referring to certain questions left unanswered by the report under consideration, he noted firstly that paragraph 15 dealt with the relationship between the State and religion and said that one might well wonder why. With regard to paragraph 16, he asked if there were political parties in Greece formed on an ethnic basis. Concerning paragraph 21, he pointed out that Thrace was also, in part, on Turkish and Bulgarian territory. In Greek western Thrace, the Pomakes referred to in the paragraph were, in fact, of Bulgarian origin but were Muslim and in that region there was a mixture of peoples living together. In Bulgaria, there were also citizens of Turkish origin, and they were represented in Parliament. With regard to the Gypsies, also mentioned in paragraph 21, some of them were Christians and others Muslims. He recalled in that connection that a treaty had been signed in 1925 between Bulgaria and Turkey defining the status of Muslims in Bulgaria and of Bulgarians in Turkey.

18. The problem of minorities in that part of the world should not be underestimated, and the situation in Yugoslavia should serve as a lesson in that respect. For many years the rights of minorities there had been proclaimed and the problem had been thought solved, but now a terrible civil war was raging there. Nor were other countries immune from such threats, and for that reason every effort had to be made to solve the problems by democratic means. It was known that Yugoslav Macedonia had opted for

independence in September 1991 and that the choice had been confirmed by referendum the following month. There was also a Macedonian community in Greece and the question was how its ethnic identity was to be recognized in the framework of the State.

19. Nevertheless, the Committee should refrain from asking Greece embarrassing questions not put to States that had not ratified the Convention. He assured the Greek delegation for his part that the Committee was motivated by a desire to see the Convention applied in all situations, including the new situations currently emerging in the world.

20. Mr. IOANNOU (Greece), in reply to the questions raised by the members of the Committee, said that he had the impression that those questions concerned not only the Convention but the whole range of human rights. That was a source of gratification to him since he had himself been concerned with human rights in his country for a number of years. Some 60 questions had been asked which he could not answer one by one but would instead group them into categories. Questions that he could not answer immediately would be dealt with in the next report of Greece.

21. He first recalled that his country was a member of the European Community and that its foreign policy therefore fitted in with that of the Community. By way of example he referred to the decisions taken shortly before at the meeting in Lisbon.

22. With regard to the declaration provided for in article 14 of the Convention, he pointed out that Greece was currently planning to set up a department which would deal with all petitions submitted under international instruments.

23. Specific texts at the domestic level were necessary to allow Greek courts to apply the Convention directly in the penal domain. To that end, Act 927/1979 had been promulgated, and the Committee had already been informed about that law in previous reports submitted by Greece. So far, no sentences had been passed on the basis of that law, simply because, however, there had been no complaints, a situation to be explained by the fact that Greek society was without racist tendencies. Thus, racial discrimination did not exist with regard to housing. If a problem arose in that connection, the victim could appeal to the Attorney-General.

24. With regard to the question of minorities, he recalled that the treaty signed in Lausanne in 1923 (which bound not only Greece and Turkey but also major Powers like the United Kingdom and France) had provided that Muslims could remain in western Thrace, whilst persons of Greek origin could stay in Constantinople.

25. There were currently, in that part of western Thrace situated on Greek territory, a Muslim minority which, as was noted in the report, was estimated to be composed of between 110,000 and 115,000 persons. Of those only a few dozen had lodged complaints. In fact, in Thrace, there were a small handful of agitators; the rest of the community lived in peace. Western Thrace had long remained underdeveloped but major steps had been taken to help the Muslim minority, to the extent indeed of triggering resentment among the orthodox population. Development was ultimately the means to solve the problems of the

region. Greece was, moreover, particularly sensitive to the problem of minorities in view of the fact that there were many Greek minorities outside the country. In particular, Greece was a co-sponsor of the draft world declaration on minorities.

26. Incidents had occurred in 1990 in Komotini, the central town of western Thrace which he knew well having studied at university there. The reported incidents had not in fact been racial in character and had involved opposing groups from the same community. In addition, no complaint had been made to the Attorney-General and there had been no reason to give effect to Act 927/1979. Moreover, the Muslim minority in Thrace did not generally ever appeal to the Greek courts. The expropriation measures that had been taken had affected both Christians and Muslims (82 per cent of property owners were Christians and 18 per cent Muslims), but no protest had been lodged with the courts on the basis of discrimination.

27. With reference to parliamentary immunity, it needed to be made clear that legal action had been taken against Mr. Ahmed Sadiq when he was no longer a member of Parliament for having engaged in activities likely to harm relations between Greece and other States, and no country could allow one of its citizens to advocate the annexation of a part of the national territory to another country. Mr. Ahmed Sadiq had, however, only received a fine. Moreover, two Muslim members of Parliament were currently in office and even though they were fomenting hatred, no action was being taken against them.

28. Furthermore, the Greek electoral system provided for a threshold of 3 per cent of votes for parties to be represented in Parliament, which was less than in many other countries. In fact, Turkey, which complained that the 3 per cent threshold prevented Muslim representation, had itself set the threshold at 10 per cent.

29. With regard to the Muftis, he recalled that Greece had granted them legislative powers and that, as a result, they had to be nominated under a specific procedure: the Muslim community proposed three persons to the Greek authorities which appointed one of them.

30. With respect to the question of the Albanian minority, he wondered what exactly was meant by the term "minority". If no more than a few families scattered around the country could be so designated, then there was indeed an Albanian minority in Greece. However, it should be recalled that until the First World War a large part of Albanian territory was inhabited by Greeks under Ottoman administration and it was more appropriate to speak of a Greek minority in Albania. Concerning the question of Macedonia, that was a region divided among Greece, Bulgaria and former Yugoslavia. The idea of a Macedonian ethnic group was not a sociological reality but had been invented by Marshal Tito with a view to creating a new State. There was then no Macedonian minority in Greece but merely citizens who spoke a language very similar to Bulgarian.

31. In reply to the question whether a racist association could be dissolved by a Greek court, he declared that he was not aware of any such case.

32. Finally, he requested members of the Committee to forgive him if he had not replied to all their questions. His country would provide full and detailed replies in its next report.

33. Mr. WOLFRUM, speaking as country rapporteur, thanked the Greek delegation for having tried to reply to the questions asked and for having made it possible to resume and expand the dialogue between the Greek Government and the Committee. Not all the questions had been addressed, however, and some replies were hardly convincing. He therefore looked forward with interest to the next report that was due to be submitted by Greece in two years' time.

34. Mr. ABOUL-NASR, returning to the problem of Macedonia, said that the inhabitants of the region did indeed constitute an ethnic group since they had their own language and wanted to live together.

35. Mr. FERRERO COSTA expressed surprise at certain statements made by the Greek delegation, in particular by the sweeping assertion that the fact that the courts had never had to deal with racial cases showed that there was no discrimination of that kind in Greece. He would welcome further information in the next report of Greece on measures taken by the Government to ensure the implementation of the provisions of article 5 of the Convention.

36. Mr. van BOVEN noted that the Greek delegation had not replied to all of the many questions asked. He hoped that the following report would contain answers to the outstanding questions and would be submitted within the time-limits.

37. The CHAIRMAN proposed that Mr. Wolfrum be allowed the time required to prepare his conclusions and thanked the Greek delegation for having presented its country's report and for having provided additional information.

The Greek delegation withdrew.

Tenth and eleventh periodic reports of Costa Rica (CERD/C/197/Add.8)

At the invitation of the Chairman, Mr. Rhenan Segura, Mr. Rodríguez Alpizar, Mr. Muñoz and Mr. Valerio (Costa Rica) took places at the Committee table.

38. Mr. RHENAN SEGURA (Costa Rica) began by recalling that Costa Rica had been the first country to ratify the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as well as one of the first countries to ratify the International Convention on the Elimination of All Forms of Racial Discrimination, on 4 January 1969, which showed its constant interest in human rights.

39. Costa Rican society had been formed in a quite distinctive way since, in contrast with other American countries, there had never been any slaves or large landowners in Costa Rica. The country had therefore been able to establish democratic institutions which it had developed throughout the colonial period and had consolidated until the present day. The country currently had a well-deserved international reputation in the area of promoting and protecting human rights.

40. Introducing the report of his country (CERD/C/197/Add.8), he recalled that it dated from the second half of 1991 and that some information needed to be updated. As a former member of the Committee, he also acknowledged that the document in question did not comply with the criteria laid down by the Committee. It contained no statistical data, was unclear in parts and gave a great deal of information on certain historical or secondary facts while leaving out important points concerning discrimination. The fact was that Costa Rica was lacking in competent staff and had to discharge so many international obligations that the Ministry of Foreign Relations was overburdened with work. Costa Rica had ratified all existing international instruments, except the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and that exception had been due to legislative problems which had not been able to be resolved.

41. The main gap in the report of Costa Rica was that it did not contain a chapter dealing with the black population of the country, which comprised 17,000 persons or 0.56 per cent of its total population. The black community lived mainly in the Limón region, and in the centre of the country, in particular in the capital, and was fully integrated into the economic and social life of the country. The Constitution, like other legislation such as the Prohibition of Discrimination in respect of Employment Act and the Health Act along with the Civil Code, the Criminal Code and the Labour Code, prohibited all form of discrimination based on race, colour, sex, political opinion, national or social origin, filiation or economic situation such as to limit equality of opportunity or treatment in respect of employment.

42. For that reason, Costa Rica had no statistics relating specifically to the black population since all racial distinctions were prohibited. Blacks had access, in the same way as whites, mixed race groups and the indigenous population, to all social services. Blacks were elected to Parliament and in 1986-1990 a black member of Parliament was Vice-President of the Congress. There were ambassadors and other diplomats, judges, senior officials at the University of Costa Rica and writers who were black. An important cultural movement was researching the origins of this Jamaican and West Indian component of Costa Rican society and, in the province of Limón, a museum of black civilization had been opened with the main aim of highlighting the economic and cultural contribution made by the black population in the country. Furthermore, through the initiative of several university professors, black literature had made great strides in recent years. Also, for about 30 years, despite the country's difficult economic situation, there had been three English-Spanish bilingual State schools in the province of Limón to prevent the black population from being cut off from its roots.

43. What was more, Costa Rica was sparing no efforts in the educational field and its literacy rate was one of the highest in the world, as evidenced by UNDP's Human Development Report 1991. Curricula were structured in such a way as to teach children from the earliest years to respect others and their differences. Children were taught the various cultural principles in order to combat the prejudices at the root of discrimination and were familiarized with the provisions of the main international human rights instruments.

44. It was noteworthy that, with a view to the regional conference preparatory to the World Conference on Human Rights, which would be held in Costa Rica in December, the Special Commission formed for that purpose had

launched a human rights campaign, particularly with regard to the most vulnerable groups in society, namely women, the indigenous population, children, the elderly and refugees.

45. With regard to the situation of the indigenous population, he was anxious to furnish explanations concerning the allegations directed against the Government of Costa Rica by CODEHUCA (a non-governmental human rights organization) at the last session of the Commission on Human Rights to the effect that a group of indigenous persons living in the south west of the country had been abused and persecuted. The facts were that a patrol of 12 policemen had gone to the Talamanca region following complaints by several inhabitants that cannabis was being grown in the region. On 22 February, the patrol had clashed with presumed drug traffickers, including a number of indigenous persons, and two persons had been killed. The policemen had arrested several persons and were alleged to have exacted various payments from them. The Government had immediately requested the opening of a judicial inquiry. The 12 policemen had been suspended from their duties and held in detention. Three of them were still in prison. It would be for the courts to determine responsibilities and the punishment to be applied.

46. At the international level, the Government of Costa Rica had always condemned categorically the crime of apartheid and in 1986 had decided to break off diplomatic relations with the Republic of South Africa. Since 1967 all commercial relations with South Africa had been prohibited. Costa Rica had not recognized the Bantustans and had condemned the occupation of Namibia. It had always voted for United Nations resolutions aimed at putting an end to apartheid once and for all and had been actively involved in the efforts to combat that scourge since it had served in turn as Chairman and Vice-Chairman of the Special Committee against Apartheid.

47. He recalled finally that Costa Rica had ratified ILO Conventions Nos. 169 concerning Indigenous and Tribal Peoples in Independent Countries, 111 concerning Discrimination in respect of Employment and Occupation and 100 concerning Equal Remuneration.

48. Mr. DE GOUTTES, country rapporteur for Costa Rica, welcomed Mr. Rhenan Segura as a former member of the Committee with whom dialogue promised to be very fruitful. He paid tribute to Costa Rica which, in a region of the world rife with conflicts, was a country devoted to peace and tolerance, attached to democratic institutions characterized by political pluralism and the possibility for power to change hands and one of the rare States in the world to have proclaimed the abolition of the army in its Constitution.

49. Moreover, Costa Rica although not economically powerful had an influential position at the international level. It had been behind the new impetus given to the regional peace process with the ARIAS plan adopted in August 1987. Several international organizations were operating on its territory and the country itself was represented in many international organizations. In addition, Costa Rica was one of the States to have acceded to a considerable number of international human rights instruments. It had ratified the International Convention on the Elimination of All Forms of Racial Discrimination as early as January 1967 and in January 1974 made the

declaration provided for under paragraph 1 of article 14. Costa Rica had always been concerned to maintain dialogue with the Committee and to submit regularly its periodic reports on the application of the Convention.

50. Lastly, Costa Rica was a country of jurists, with a profound respect for the law, where institutions and provisions for the protection of human rights were strongly defended.

51. Clearly, then, Costa Rica was a country subject to the rule of law, but - precisely because it aspired to be a model of democracy in Central America - there were questions to be asked about a few points that remained unclear. Thus, despite the homogeneity of the population and of society in Costa Rica, acute problems could still arise for persons belonging to minorities, notably indigenous populations, black populations and refugees. On that point, the report of Costa Rica under consideration (CERD/C/197/Add.8) revealed certain shortcomings, as the representative of that country had just admitted.

52. As far as the positive aspects of the report were concerned, and with reference to the questions that had been raised by members of the Committee in 1987, it could be stated that the Government of Costa Rica provided therein satisfactory information on four essential questions.

53. First, concerning the country's policy on apartheid, paragraphs 55 to 65 of the report gave a very comprehensive account of the measures taken in that regard.

54. Secondly, the report contained very interesting information on how international instruments took precedence over Costa Rican domestic law; paragraphs 88, 89 and 140 to 142 showed that under article 7 of the Costa Rican Constitution, international instruments approved by the Legislative Assembly took precedence over the laws of the country upon their promulgation. In addition, articles 10 and 48 of the Constitution gave the Constitutional Court jurisdiction in respect not only of actions of unconstitutionality but also of remedies of habeas corpus and amparo, including cases involving violations of the fundamental rights laid down in international instruments: thus, it was formally recognized not only that the provisions of international law were of a higher rank than domestic laws, but also that they were of equal rank with constitutional provisions.

55. Thirdly, the report under consideration laid particular emphasis on the unique institutional machinery existing in Costa Rica for the protection of human rights. Special mention should be made in that connection of the Constitutional Court division of the Supreme Court of Justice (with jurisdiction in respect of the remedies of habeas corpus and amparo), the National Indigenous Affairs Commission, the Office of the Ombudsman for Human Rights, an office attached to the Ministry of Justice and set up in 1990 which appeared to have very wide-ranging powers, the National Refugee Commission, and lastly the Offices of the Ombudsman for Women and the Ombudsman for Children, which were described at length in the report.

56. Costa Rica had endeavoured in the report under consideration to respond to the requests made earlier by the Committee for information on the demographic and ethnic composition of the population. However, although there was a great deal of information about the population in general, there was all

too little about the ethnic and indigenous groups, which were of most interest to the Committee. It was true that the geographical distribution of the seven indigenous groups in the country was given in paragraph 65, but that was not enough. It was somewhat surprising, for example, that paragraph 64 should state that there was no reliable estimate of the number of indigenous people; the figure of 19,050 persons living on reservations, accounting for 1 per cent of the country's total population, was advanced, whereas the proportion of 0.5 per cent had been quoted in Costa Rica's previous report. It would be helpful if in future the Government could provide more detailed demographic data on minorities, as indeed the representative of Costa Rica had just undertaken to do.

57. The report had a number of weaknesses. According to the Committee's guidelines, periodic reports should consist of two parts - first, a general part describing the situation in the country, and secondly, an analytical part, describing how each article of the Convention was implemented in practice; the document now before the Committee did not exactly comply with those requirements.

58. The report's first weakness concerned its general part, which contained too much data of no direct interest to the Committee, such as for example the long descriptions of the country's geography, its constitutional development and its administrative structure. Similarly, the information given in paragraphs 119 to 121 on the protection of women and children came more within the terms of reference of other bodies. On the other hand, the general part did not provide data that would have been useful on social, economic, political or other indicators with a direct bearing on problems of discrimination. For instance, regarding developments in the country's economic situation, the report offered no up-to-date figures on the rate of inflation, the foreign debt burden, trends in per capita GNP and GDP, the unemployment rate, the social cost of the reforms demanded by the IMF, etc. Where the social situation was concerned, information on possible social conflicts, on any tensions that might exist in the most disadvantaged parts of large towns, and on measures taken in shanty-town areas, would also have been useful. Lastly, the Committee would have liked to know more about recent political developments, notably about reforms introduced since the election of the new President of the Republic.

59. The second weakness of the report was the incompleteness of its second part, which should have consisted of an article-by-article analysis of how the Convention was being implemented. It was true that there was some information on the matter dotted around in chapters III, IV and V, but it was set out piecemeal and not in accordance with the systematic method recommended by the Committee. For that reason, he would be led to raise a number of questions, following the order of the provisions of the Convention.

60. First, concerning article 2 of the Convention, some explanations were given regarding the measures taken on behalf of two minority ethnic groups, namely Indians and refugees, but the black population was not mentioned in the written report, although in his oral introduction the representative of Costa Rica had provided useful details in that connection. Paragraphs 67 and 103 to 111 contained comprehensive and useful information on laws and decrees enacted to protect the indigenous population. However, the report was not sufficiently explicit on the practical difficulties still encountered

by Indians on a daily basis. Those difficulties had been described, in particular, by the Commission for the Defence of Human Rights in Central America (CODEHUCA) at the forty-eighth session of the Commission on Human Rights; they had concerned health, education, land ownership and freedom of movement, and further explanations on those points would be necessary. In addition, a number of questions were prompted by the parts of the report relating to indigenous groups, regarding for example the practical means of action available to the National Indigenous Affairs Commission. Since the 1977 Act which had granted 140,000 hectares of land to the indigenous people, had any measures been taken to continue to distribute land, regulate land use more strictly and, most importantly, prevent unlawful evictions? According to some sources, notably CODEHUCA, there had recently been several cases of the land rights of indigenous people being violated on the occasion of mineral prospecting operations. Lastly, an Indigenous Identification Act had recently been adopted in order to issue identity cards to the indigenous population: was it to be concluded that the identity of the indigenous people had not previously been recognized?

61. With regard to the refugees who had entered Costa Rica in large numbers fleeing conflicts in the region, it could be considered that paragraph 114 of the report gave satisfactory replies to the questions raised by the Committee in 1987 (on the one hand, reception arrangements, and on the other, setting up of the National Refugee Commission). However, where the black population was concerned, the information given was very inadequate. Thus, paragraph 111 noted merely that the black population was "fully integrated in the nation's political and economic development", but the Committee would certainly not be satisfied with such a categorical and optimistic statement. In fact, according to other sources of information, Blacks in the province of Limón had enjoyed right of access to the central valley for only some 40 years, and according to some reports, even now they were almost never seen there except on festival days. The Costa Rican Government should therefore provide more detailed information on the actual situation of Blacks in the country. More generally, if the actual situation of all minority ethnic groups was to be properly assessed, information would need to be provided on the usual social indicators of non-integration: rates of unemployment, delinquency, alcoholism, prostitution, illiteracy, suicide, etc., which were very reliable criteria for judging lack of adaptation to the rest of society.

62. The explanations given in the report on implementation of article 3 of the Convention were satisfactory. Concerning implementation of article 4 of the Convention, in addition to the principle that all discrimination was prohibited, a principle enshrined in article 33 of the Constitution of Costa Rica, the report listed a number of legislative enactments prohibiting racial discrimination, but the list appeared to be incomplete where the requirements of article 4 were concerned. No information was provided as to whether there was any legislation declaring propaganda or the dissemination of ideas based on racial superiority or hatred, as well as acts of violence, or incitement to such acts against any race or group of persons on the grounds of their colour or ethnic origin, to be offences punishable by law. Nor did the report indicate whether there was any legislation prohibiting racist organizations and racist propaganda activities, and declaring participation in such organizations or activities an offence punishable by law. It should also be noted that the penalties provided for under article 385 of the Criminal

Code for incitement to hatred were relatively mild: it would be interesting to know what degree of seriousness was attributed to that offence in the scale of penalties in force in Costa Rica.

63. Although the principle of equality of all persons before the law enshrined in article 5 of the Convention was proclaimed in article 33 of the Constitution, and despite the various decisions of the Supreme Court cited in paragraph 150 of the report, information obtained on the situation of ethnic minorities in Costa Rica suggested that those groups did not in fact enjoy all the rights provided for under the Convention. For example, the right to equal treatment before the courts could only be verified if the Committee knew the actual number of complaints lodged by Indians and Blacks on which a decision had been handed down; similarly, the right to security of person, and to protection against violence or bodily harm inflicted by government officials or by other persons, was no doubt safeguarded in law by the existence of the remedies of habeas corpus and amparo; but when Indians were victims, for instance, of evictions, acts of bodily harm or violence, were they in a position to avail themselves of those remedies? Were they informed of their rights, and did they have the necessary means to enforce them? With regard to political rights, what was the percentage of Indians and Blacks who took part in elections, and what percentage were employed in the public service at all levels? Was the right to freedom of movement and residence fully guaranteed in the case of the Indians, in view of the fact that they had been settled in reservations, and that, according to CODEHUCA, they required a permit from the National Indigenous Affairs Commission to change reservations? Was not the right to property limited in the case of Indians confined to such reservations? Did the Indian populations fully enjoy, on an equal footing with other citizens, the other freedoms enumerated in article 5 of the Convention: right to nationality, right to choice of spouse, right to freedom of religion and opinion, right of access to public places, etc?

64. Lastly, despite the measures for the protection of human rights cited in paragraphs 92-110 of the report, the living conditions of the Indians, which appeared to be extremely precarious, were bound to make it very difficult for them to enjoy their economic, social and cultural rights (right to health, to medical care, access to social services, right to work, to housing, to education and vocational training, etc.). CODEHUCA had referred in particular in that connection to prostitution among young indigenous people, persistent illiteracy, epidemics, and high infant mortality. The Committee would undoubtedly wish the Costa Rican Government to provide it with a more realistic picture of the actual situation of the Indian populations in subsequent reports.

65. Concerning article 6 of the Convention, he noted that the report contained interesting explanations of the remedies of habeas corpus and amparo and cited a number of provisions prohibiting and penalizing discriminatory measures. However, no statistics were provided on the number of complaints lodged and sentences handed down, and no example was given of any case of racism which had led to a conviction: that was a very unfortunate omission, since it meant that the Committee was thus deprived of one of the means of ascertaining whether the Convention was really being implemented. The Costa Rican Government should therefore provide detailed information in its next report on complaints and convictions in regard to racism, with all the

relevant statistics available, including if possible the percentage of complaints and convictions for offences against Indians, Blacks and refugees.

66. Concerning implementation of article 7 of the Convention, the report provided interesting information on the cultural role of the National Indigenous Affairs Commission, on the bilingual policy pursued in areas where indigenous peoples lived, on the existence of schools for indigenous groups, and on civic education courses. Other members would no doubt have questions to raise on those matters, and he would confine himself to asking how many schools the indigenous peoples had, what proportion of them attended such schools, how many Indians went on to higher education, how many indigenous persons occupied responsible positions both in the public sector and in the private sector, and what cultural activities for indigenous populations were offered - for instance, radio or television programmes, or videos in the appropriate languages. Lastly, did the Costa Rican Government protect and encourage expressions of the Indians' own distinctive culture, such as art and music?

67. Mrs. SADIQ ALI found the report (CERD/C/197/Add.8) difficult to assess, in that it was not drafted in accordance with the Committee's guidelines and did not reply to questions raised at the time of consideration of Costa Rica's previous report.

68. She would confine herself to the question of indigenous populations, since the report contained a number of contradictory statements in that regard. Thus, the Government claimed that there was no Indian problem, while at the same time admitting, in paragraphs 64, 106 and 107, that those populations, in addition to being geographically and socially marginalized, remained "deliberately and tenaciously isolated". In paragraph 67 of the report reference was made to "the abuses suffered by the native population" and to the legislation granting them 140,000 hectares of land. Since the reservations were inhabited by 25,108 individuals, only 19,050 of whom were indigenous, it was to be concluded that the latter were far from living in total isolation. What was the economic, social and cultural status of the two population groups living in the reservations, and how were their respective situations to be compared? How had the 140,000 hectares of land been allocated, and in what way had the land so granted improved the lot of the persons concerned? Statistics would be useful in that connection.

69. The 5,000 Guaymis, who were thought to be descendants of the original inhabitants of Costa Rica and who had been listed in a separate category, had organized a protest demonstration in the capital in July 1990, demanding to be recognized as citizens of the country - a demand which had now been granted; previously, they had possessed only temporary residence permits, which cost $43 to renew - an exorbitant sum for most of them. How had the authorities gone about issuing them with identity cards, in view of the fact that some Guaymis spoke no Spanish and did not know their date of birth? Was that population group now covered by the Costa Rican social security and health insurance system? In addition, it would be interesting to know to what extent population groups of non-European origin had access to the system of secondary education set up in 1949, and to what extent they were able to buy land, take out bank loans, and hold office at local government level, as well as take part in the planning and execution of projects that concerned them.

70. In paragraph 106 of the report, mention was made of indigenous populations who had migrated to Costa Rica more than 30 years ago: were they included among the 19,050 persons referred to in paragraph 64, and what was their social, economic and cultural situation?

71. Generally speaking, the picture of the indigenous populations given in the report was somewhat confused, and the Committee would need to be provided with more structured data. It would also need to know how the Government was tackling the task of establishing infrastructures in reservations which, because they were so far away, had too few schools and inadequate medical services and power and drinking water supplies.

72. Mention was made in paragraph 62 of the high degree of mixing between population groups in Costa Rica. Specific demographic data concerning the mixed race groups would be useful, as well as details about their current position in the social hierarchy - level of education, types of employment, housing, etc.

73. Paragraph 114 of the report mentioned the 350,000 Central Americans who had sought asylum in Costa Rica. Since Mr. de Gouttes had already referred to the problem of refugees, she would not return to it. It was, however, stated in the aforementioned paragraph that most of the persons concerned had "a low cultural level", a somewhat condescending expression which smacked of racial discrimination. It was stated in paragraph 89 that racial discrimination did not constitute a problem in Costa Rica, because there was no restriction or inequality of opportunity on the grounds of racial or ethnic origin: that was perhaps true in the legal sense, but the attitude of the white population towards indigenous people, Blacks or refugees did not really seem to have changed. In that context, it would be interesting to have access to reports issued by non-governmental bodies concerned with human rights in Costa Rica. In his statement, Mr. de Gouttes had himself relied to a large extent on the very illuminating report produced by one of those bodies. In her view, any human rights violation brought to the attention of such bodies should be reported to the Committee. It would also be useful for it to have details on the activities of the Ombudsman, and to know whether poorer citizens were eligible for legal aid.

74. In regard to labour legislation, workers' representatives claimed that the Labour Code of 1943 was out of date, particularly in respect to grounds for dismissal. Did the Government of Costa Rica have any plans for amending that code?

75. Mr. BANTON endorsed the comments made by the preceding speakers, with the exception of the request for what he considered to be exaggeratedly detailed demographic statistics.

76. He would appreciate clarification on the following questions concerning the indigenous populations: what action had been taken following the criticisms levelled at the National Commission for Indigenous Affairs? Were deforestation activities, which were harmful to the natural environment of the indigenous population, continuing in the Boruca region? Had the deficiencies in health services noted in the region of Cabagra been remedied, and what procedures for consultation on such matters existed? Were the procedures for the issuing of identity cards to the indigenous population in conformity with

the provisions of the Convention? Concerning the drilling operations in an indigenous "region" mentioned in paragraph 66 of the report, did the term "region" imply the traditional lands of indigenous groups, or lands which they were occupying without title? The question of land rights should be covered in more detail in the next report. What were the abuses referred to in paragraph 67 of the report? Did police training take into account the provisions of the United Nations Code of Conduct for Law Enforcement Officials? Lastly, the Costa Rican Commission on Human Rights (CODEHU) had expressed its concern about the partiality of reports on human rights, arising from the fact that non-governmental organizations working in the field of human rights were not consulted by the authorities responsible for preparing reports. Did Costa Rica plan to consult such organizations for that purpose in the future?

The meeting rose at 6.10 p.m.

CERD/C/SR.942
7 August 1992

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-first session

SUMMARY RECORD OF THE 942nd MEETING

Held at the Palais des Nations, Geneva
on Wednesday, 5 August, 1992, at 10 a.m.

Chairman: Mr. VALENCIA RODRIGUEZ

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7) (continued)

Tenth and eleventh periodic reports of Costa Rica (CERD/C/197/Add.8) (continued)

At the invitation of the Chairman, Mr. Rhenan Segura and Mr. Vernor Muñoz (Costa Rica) took places at the Committee table.

1. Mr. AHMADU said the report of Costa Rica was to be applauded, particularly the sections devoted to the Constitution and to minorities. He believed, however, that the situation in Costa Rica was far from perfect, especially where its sociological aspects were concerned. His main preoccupation was the degree to which the black population, in particular, had been integrated and could become involved in decision-making and the extent to which it had access to occupations such as the Civil Guard. He would also like to know whether Roman Catholicism was the only religion tolerated in the country. If so, he feared that discrimination might be felt by persons of other faiths.

2. Mr. WOLFRUM said that the human rights situation in Costa Rica was, in general, to be commended, especially since the introduction of constitutional reform. However, he feared that the human rights situation was less satisfactory with regard to the indigenous population.

3. The report stated that there were 19,050 indigenous persons in Costa Rica but he believed the figure was nearer 30,000, although, in the absence of a census, a realistic estimate was difficult. He was concerned that, until 1991, members of the Indian population had been unable to obtain identity cards, which in turn denied them the possibility of obtaining passports and, without identity cards, they could not own or purchase land. The situation had changed following legislative measures taken in 1991 but he would like to know whether the entire indigenous population had now been registered for identity cards, and why the process had taken so long. Although the legal situation had improved, land acquisition remained a major problem. He was aware that the Government had provided for reservations, but information was needed on their status. He was not sure that the Government's measures fully met the requirements of the indigenous population. For example, the National Indigenous Affairs Commission had proved unacceptable to the indigenous population, being viewed as an adversary. In conclusion, while the legal, economic and social situation of Costa Ricans in general was satisfactory, that of the indigenous population needed to be improved.

4. Mr. van BOVEN said Costa Rica was to be congratulated on accepting its political responsibilities in the region and welcoming a large number of refugees who had fled violence in neighbouring countries. It had continued its peace efforts in the region, had a good human rights record and had been an early signatory to the International Convention on the Elimination of All Forms of Racial Discrimination. It had submitted regular reports but he regretted that they had mainly contained static facts rather than information on trends and developments. Furthermore, the position of indigenous peoples

was not adequately covered in the latest report. Whilst details were given of civil and political rights, economic, social and cultural rights were hardly mentioned. With reference to paragraph 110 of the report, it was not clear which of the ILO Conventions had been ratified by Costa Rica, since the Indigenous and Tribal Populations Convention, 1957 (No. 107) had subsequently been revised in 1989. According to paragraph 111 of the report, the black population was "fully integrated in the nation's political and economic development", but he would like to know whether the black population played a significant role in positions of authority in the country and how the term "fully integrated" was to be interpreted. Although Costa Rica had made a declaration under article 14 of the Convention, he was not sure how far the population, indigenous and otherwise, was aware of the opportunities offered under the article, and indeed, how far the Convention itself was known.

5. Mr. ABOUL-NASR inquired what the status of reservations was, who owned such areas and whether the indigenous populations were forced to live there. He also wished to know whether the indigenous population had been consulted before the Costa Rican Petroleum Refining Company (RECOPE) had entered its region and drilled for two years.

6. Mr. DIACONU thought that there was great potential for discrimination in Costa Rica due to the presence in its territory of both immigrants and an indigenous population. He would like further information on the access of indigenous persons to national institutions. The illiteracy rate in Costa Rica, which, according to the report, was 3 per cent, was a considerable achievement, but he believed the rate among indigenous persons was nearer 75-80 per cent. He would like to know why such a discrepancy existed and what measures had been taken to remedy the situation.

7. Mr. RHENAN SEGURA (Costa Rica), referring to the large number of requests for statistics, said he recognized that statistics were useful but thought that they did not always give a complete picture of a situation. The figure of 25,108 given in paragraph 67 for the indigenous population inhabiting reservations could be explained by the fact that reservations were also inhabited by persons who were not, or not fully, Indian, due to mixed marriages, for example. The main problem facing Indians on reservations was health. Whilst 96 per cent of the population in general had access to health services, problems arose on the reservations because of their remote location, difficulties of access and the conflict between the indigenous population's traditional medicine and acceptance of other methods and treatment. However, Costa Rica had established nutritional programmes, was encouraging preventive medicine and concentrating on combating cholera epidemics.

8. He recognized that the indigenous population also had problems with regard to education. The reservations lacked teachers, teaching materials and, in particular, parallel texts. There was also conflict with regard to the very principle of teaching Spanish because of fears that the indigenous population might lose its cultural identity. The Government was trying to ensure that education was provided in both Spanish and local languages.

9. Before replying to the questions raised concerning land ownership and mining activities, he would like to clarify the meaning of the term "reservation", a term which he personally disliked, but used for want of a better alternative. Some 40 years earlier, the population of Costa Rica had

been concentrated in the central area and around the capital, but gradually agricultural colonization had spread outwards into areas inhabited by indigenous groups. That process had been facilitated by the absence of legal entitlements to the land concerned, as well as by internal differences between the indigenous communities, which made them powerless to resist the invasion. In such circumstances, there was clearly a need to set up reservations, which would make possible a communal system of land ownership on a permanent basis. The first attempt to establish a system of reservations had been in 1945: although well-intentioned, it had not been supported by legislation, and suffered from many deficiencies. Eventually laws had been passed to ensure that the system operated on a sound basis.

10. To some, the term "reservation" might suggest a kind of concentration camp, or an open-air museum where tourists could come to view protected species. That was far from being the case. In Costa Rica, reservations were areas of land that had been handed over, inalienably, to the indigenous community; the areas concerned appeared on maps, and were entered in public land ownership records. On the reservation, each family had its own holding, and could only sell that holding to other Indians; that requirement was in order to avoid loss of commonly-owned property through land speculation. The system had been successful in putting an end to the constant encroachment on the indigenous territories and to the inevitable retreat of their populations. It ensured that the Indians enjoyed the same rights to land and property as all other citizens of the country.

11. On the question of mining activities, the Legislative Assembly was responsible for granting mining concessions in the reservations: as was pointed out in the report, all indigenous population groups were represented in the Assembly. Concerning oil prospecting, it had once been thought that oil was to be found in one reservation, and concessions had been granted to a national oil company: unfortunately, after exploration, which had caused serious environmental damage, none had been found. He stressed that the problem concerned only one of the many reservations in the country. Finally, two experimental projects had recently been launched by the Electricity Institute of Costa Rica to bring electricity to indigenous populations in the reservations through the use of solar power.

12. On the question of freedom of movement, indigenous peoples were free to travel wherever they wished. They were legally required to give notice of their departure from a reservation, not in order to restrict their freedom of movement, but simply in order to protect the system of collectively-owned property.

13. Mrs. Sadiq Ali had raised the question of identity documents in connection with the Guaymis. The Guaymis were not in fact the oldest inhabitants of the country: they were a nomadic tribe living on the frontier between Panama and Costa Rica, an area which until 1942 had been completely wild. The Guaymis were traders, and moved from one country to the other according to which seemed to offer the best prospects for trade. Legislation had been drafted with a view to providing the tribe with identity documents: it should be realized that other indigenous groups already possessed identity documents, and in addition were free to apply for passports should they so wish. The Guaymis had simply been asked to decide whether they preferred to settle in Costa Rica or in Panama, and the statement that they had had to pay

$43, or any other sum, to obtain a residence permanent was quite untrue. Bilateral agreements had been concluded between Panama and Costa Rica regulating the question of the Guaymi people.

14. Neither prostitution nor alcoholism were problems specific to the indigenous populations of Costa Rica, except to the extent that they were part of the more general social problem of the manipulation and abuses inevitably suffered by disadvantaged sectors of the population, whether indigenous, black, mixed race or white. Nor was there any serious drug problem among such groups. He could not for the present provide any statistics of suicide or delinquency rates among indigenous peoples, and no figures were available regarding the percentage of black, indigenous or mixed race groups among the prison population.

15. Indigenous peoples enjoyed the same constitutional freedoms and guarantees as other citizens. As in most developing countries, the social hierarchy was based on economic rather than on racial criteria.

16. In reply to the question on infrastructure, it was true that in the reservations such facilities as roads, schools and hospitals, not to mention supermarkets, were noticeably lacking. Although an infrastructure was gradually being created, it was still in no way comparable to that existing in more developed parts of the country.

17. Mr. de Gouttes had raised the question of the mobility of the black population. It was true that before 1948 black persons had not been allowed into the central part of the country, but after the revolutionary government had come to power those restrictions had been abolished. Today, the black population enjoyed unrestricted freedom of movement throughout the country.

18. Attention had been drawn to the contradiction between the statement in paragraph 111 of the report that the black population was fully integrated in the nation's political and economic development and the statement that that population was concentrated on the Atlantic side of the country. He stressed that the Atlantic region was an important area, with a well developed infrastructure; it contained the country's main port, and was also an important-banana producing region.

19. On the problem of refugees, the report he had submitted a year ago to the Committee on Economic, Social and Cultural Rights had given extensive information about the country's refugee population, and he would refer members of the Committee to that report.

20. Mr. Ahmadu had raised the question of freedom of religion. It was true that article 75 of the Costa Rican Constitution stated that the Roman Catholic religion was the State religion; that article had given rise to lengthy debate on the occasion of his report to the Human Rights Committee. Unfortunately, it was unlikely that the article, which he agreed was discriminatory, would be amended in the near future, but he stressed that, despite its provisions, there was complete freedom in Costa Rica to practise other religions, provided that they were not prejudicial to good order or contrary to the Constitution. In answer to a question on the administration of reservations, he said that reservations were in fact run by associations of indigenous groups.

21. He agreed with Mr. van Boven that the report had serious shortcomings: it should have contained more statistics, and more information on the black population. He himself was not the author of the report: it had been drafted by the Ministry concerned. All that could be done was to refer it back to the Ministry with the request that it should be redrafted according to the Committee's guidelines. It was all the more difficult for him, as a former member of the Committee, to defend a report which suffered from such deficiencies.

22. In reply to a further question from Mr. van Boven, he said that Costa Rica had ratified ILO Convention No. 69, and had recently submitted its first report to the ILO providing the information requested under that Convention.

23. In reply to the question whether steps were being taken to make the Convention more widely known, in particular among the legal profession, he said that, due to Costa Rica's high literacy rate, there was already extensive awareness of all human rights instruments, not only in the legal profession but also at secondary school level. Following the recent regional conference held in preparation for the World Conference on Human Rights, an active information campaign had been launched to increase public awareness of human rights. In Costa Rica, the Inter-American Institute of Human Rights organized conferences and training courses on the subject, some of which he himself had addressed.

24. Mr. VERNOR MUÑOZ (Costa Rica), in reply to a question from Mrs. Sadiq Ali, said that the Office of the Ombudsman for Human Rights had been set up in March 1990 as a subsidiary organ of the Legal Department of the Ministry of Justice. Its task was to protect the human rights of all persons on the territory of the Republic, not only Costa Rican nationals but also aliens. Its mandate covered certain specific areas, namely the rights of women, children, prisoners, indigenous peoples, senior citizens, and the handicapped, and included not only those human rights enshrined in the Constitution but also those defined in conventions and international instruments ratified by Costa Rica.

25. The five most important ways in which the Office would intervene were by interceding in respect of threats, obstruction or violations of human rights; by taking preventive measures and making recommendations to the competent authorities; by recommending mandatory sanctions against any officials who violated citizens' rights; by advocating legal reform to strengthen citizens' rights; and finally, by disseminating information on human rights as widely as possible. Where the rights of the child were concerned, the Office had set up a helpline, which was open day and night, to receive complaints from children.

26. Complaints could be submitted to the Office in writing, verbally or by telephone: there was no formal requirement, as long as the facts were clearly stated. It did not accept complaints submitted anonymously, or in obvious bad faith. The process was simple, and entirely free of charge. Where the complaint involved a public official and was supported by proof, it would be passed on to the official concerned, who would be given a few days to prepare a defence. After an investigation, the Office would hand down its decision. It also provided legal aid for those who could not afford lawyer's fees. Since 1990, the Office had received some 6,000 complaints, denunciations

and requests for help: over a two-year period, it had held as many as 50 seminars, designed to increase awareness of human rights issues among police, the teaching profession and the indigenous population.

27. Mr. RHENAN SEGURA (Costa Rica) informed the Committee, that the inflation rate in Costa Rica was 18 per cent, the gross domestic product (GDP) US$ 4,413 per capita, the unemployment rate 6.2 per cent and the external debt US$ 3,600 million. As elsewhere in Latin America, Costa Rica had severe economic problems and was having to contend with the consequences of structural adjustment programmes. The new President, who had taken office in 1990, was pursuing broadly the same social policies as his predecessor and, despite the economic difficulties, the Government was doing its best to ensure that programmes designed to protect the most disadvantaged groups, i.e. blacks, indigenous peoples, women and children, were continued. The smooth transition from one government to another in Costa Rica was conducive to continuity. Moreover, the fact that Costa Rica did not maintain an army liberated otherwise wasted resources for social programmes.

28. In conclusion, he assured the Committee that he would convey its comments to his authorities and hoped that the shortcomings observed would be made good in the following report.

29. Mr. ABOUL-NASR requested some further information on the issue of indigenous populations and their property rights, which seemed to fall short of the provisions of the Convention. In the first instance, the representative of Costa Rica had said that the indigenous populations were "given" the land, which suggested that it might be taken back, whereas the land belonged to them. He had also understood the representative to say that a system of collective ownership was applied to the indigenous populations. If that was correct, the provision was discriminatory, since they were denied the right to own property individually. Moreover, the argument put forward to justify the requirement that Indians must register with the police on leaving a reservation, namely, that it was to protect their property, was not valid in the context of collective ownership. That also raised the question of whether other sectors of the population were required to register when they moved from one place to another.

30. Did the Ombudsman have the authority to question or challenge discriminatory laws, such as the property laws, with a view to their being amended so as to ensure that all people were treated equally?

31. Mr. BANTON wished to know whether anything had been done to make good the environmental damage caused by oil exploitation, referred to by the representative of Costa Rica. He also wished to know whether indigenous groups had the same access to compensation as other citizens when they were victims of environmental damage.

32. Mr. WOLFRUM, referring to Mr. Rhenan Segura's statement that the return of land to the indigenous population did not include mining rights, the explanation given being that that was the system operating in Latin America, asked whether the exclusion of mining rights applied to all property rights, for instance, in the case of an estate owned by a white person. What exactly was the relationship between the owner of mining rights and the holder of an estate or property?

33. He would like to know if there was provision for any form of self-government for the Indian people, of the kind operating in Argentina, for example. Of the two organizations for the indigenous peoples, the national commission and the Indian cultural association, only the latter seemed to be fully accepted by the Indian population, and he asked when the Government expected to confer full powers on it so as to meet the wishes of the Indian population.

34. Mr. SHAHI, referring to the statement in paragraph 67 of the report that the 11 reservations were inhabited by 25,108 individuals, 19,050 of whom were indigenous, wished to know who the 6,000 non-indigenous persons were and whether they had a share in the communal land, the point being that, as he understood it, communal ownership was confined to indigenous inhabitants.

35. Mrs. SADIQ ALI asked for further information about the role of the Ombudsman. She wished to know whether a government official convicted of a human rights violation was penalized, and what reparations the victim received.

36. Mr. de GOUTTES, speaking as country rapporteur for Costa Rica, said that it was because the Committee had expected so much of Costa Rica that it had been particularly demanding and had noted so many shortcomings in the report. He thanked the representatives of Costa Rica for acknowledging those weaknesses and for the additional information they had provided. He hoped that the Committee's comments and questions would be taken into account in the following report which, in particular, should be drafted in accordance with the guidelines and should be more narrowly focused on issues of specific interest to the Committee, such as the real situation of ethnic minorities, particularly the Indian and black populations.

37. Another point of principle, raised by Mr. Aboul-Nasr, concerned the status of the reservations, which was somewhat ambiguous. A reservation could be a place of protection but at the same time one of non-integration and exclusion. It could be a rampart against property seizure but at the same time a focus of underdevelopment. The question of the Indians' participation in decision-making on the reservations also needed clarifying. The issue of reservations for the indigenous population was a matter frequently addressed by the Committee and called for further discussion.

38. Mr. RHENAN SEGURA (Costa Rica), replying to further questions raised by Committee members, said that the status of mineral deposits in indigenous areas was covered by article 121 of the Constitution, which provided that they could not be dissociated from the control of the State. In reply to Mr. Shahi's question about the discrepancy in the figures given in paragraph 67 of the report, he said that the persons concerned were only half-Indian as a result of intermarriage.

39. Mr. VERNOR MUÑOZ (Costa Rica) said in reply to Mr. Aboul-Nasr's comments about apparently discriminatory property laws that the concept of individual property did not exist in Indian society, but was a European concept. From ancient times, the Indians had held property in common. Land was of fundamental importance in their lives. The intention was not to deprive the indigenous populations of their individual property rights, but to give legal force to their own concept of property rights. The State had not

given the land to the Indians but had legitimized a de facto situation and found a place in national legislation for Indian ownership of land that belonged to them.

40. On the question of the Ombudsman's role vis-à-vis the law, he said that the Ombudsman's functions were to consider not laws but human rights enshrined in the Constitution and covenants, treaties and conventions ratified by Costa Rica. In any case, the Constitution took precedence over domestic legislation and any conflict was settled by the competent constitutional courts.

41. In reply to Mrs. Sadiq Ali's question about reparations, he said that the Ombudsman's activities were administrative only. When it was found that a civil servant had violated a right, he or she would be punished in accordance with the law. In the event of a criminal violation or offence, the offender would be prosecuted and brought to trial, and compensation for the victim would be sought. In such a case, the Office of the Ombudsman monitored any legal proceedings against a civil servant.

42. Finally, it should be made clear that any indigenous person living in Costa Rica had access to any place in the country. The fact that there was a decree regulating indigenous property did not mean that indigenous persons could not acquire property elsewhere. The requirements concerning entry to and exit from reservations had been adopted for historical reasons and not to restrict freedom of movement.

43. Mr. ABOUL-NASR pointed out that the right of individual property ownership was not a strictly European phenomenon. Such a right had been recognized for centuries in many civilizations and could not be taken away.

44. The CHAIRMAN thanked the representatives of Costa Rica for their constructive dialogue with the Committee.

Mr. Rhenan Segura and Mr. Vernor Muñoz (Costa Rica) withdrew.

Fifth and sixth periodic reports of Bangladesh (CERD/C/192/Add.3)

At the invitation of the Chairman, Mr. Karim (Bangladesh) took a place at the Committee table.

45. Mr. KARIM (Bangladesh) said that, racially and culturally, Bangladesh had been a melting-pot for thousands of years, and today had a completely homogeneous population. There was no racial discrimination in Bangladesh, since there was but one mixed race and there were no traces of separate racial identity and prejudices.

46. All the domestic and external policies and actions of Bangladesh were non-racial. In international relations, Bangladesh had always stood against all forms of racial discrimination. It condemned the racist minority Government of South Africa and maintained no diplomatic, political, economic or cultural links with it.

47. Issues of private preferences and problems of an essentially integrative nature did not come within the definition of racial discrimination under

the Convention. In Bangladesh, there were some residual problems of socio-political integration, as in most nation States. Some details had been given in the report about the integrative process in Bangladesh, simply to emphasize the country's success in dealing with the problems of a "post-racial" society. Those facts were necessary to understand the socio-political dynamics of Bangladesh in regard to the marginal problems of national integration and consolidation. The issues of tribal integration and religious tolerance came within the competence of the Commission on Human Rights. Sociologically, there was a distinction between tribe and race. The one, mixed race of Bangladesh comprised many tribes. There was a tribal population of 0.5 per cent, divided into as many as 36 tribes distributed all over the country. Some tiny tribal groups had difficulties, at the instigation of their foreign mentors, in identifying themselves with the polity of Bangladesh. That was a problem of national integration and nothing else. Marginal problems of tribal terrorism had complicated and hindered democratic dialogue with a view to a political solution.

48. Religious discrimination was neither permitted nor tolerated in public life in Bangladesh. Issues of religious integration, which did not fall strictly within the Committee's mandate, had been included in the report to demonstrate the Government's awareness of such problems. Bangladesh was in fact far ahead of the basic requirements of the Convention.

49. Bangladesh had a sincere political will to fulfil its obligations under the Convention. It was fully committed to condemning and opposing racism and racial discrimination. Despite serious resource and other constraints, it remained committed to the reporting system. Its policy was to support and encourage the Committee in the proper discharge of its duties, and it would extend all due cooperation to the Committee.

50. Mr. YUTZIS, speaking as country rapporteur for Bangladesh, thanked the Government of Bangladesh for its fifth and sixth periodic reports, which largely complied with the formal guidelines for reporting. However, he took issue with the Bangladeshi representative's contention that there was no racial discrimination in his country, if such discrimination was to be understood within the parameters of article 1 of the Convention.

51. At the same time, it was to be welcomed that, following the departure of an authoritarian Government, democracy had been restored in Bangladesh, despite the continuance of problems to which "poor democracies" were particularly liable, including a high population density, natural disasters, and difficult economic circumstances, which often affected some population groups or minorities more than others.

52. Turning to the report itself, he said that, in general, he would have preferred to see more ample information on racial discrimination, rather than the "social discrimination" referred to in paragraph 1, although he recognized that the two were interrelated. In particular, he was not sure how the statement in paragraph 1 that "Bangladesh does not recognize any form of social discrimination" could be reconciled with the reference in paragraph 4 to "backward sections of people of different areas and races". If the contention in paragraph 8 that the provisions of the Convention could always be invoked before the courts was correct, was there any reason why the Convention could not be applied automatically?

53. The demographic details provided with regard to ethnic minorities in paragraph 9, particularly in the Chittagong Hill Tracts, were scanty, and gave little indication of the difficulties and complexities of their situation.

54. In connection with article 3 of the Convention, he would like to know the grounds for the claim in paragraph 16 that the provisions of that article were not applicable and why no specific legislative, judicial, administrative or other measures had been considered necessary in regard to article 4, as was stated in paragraph 18. In the latter case, it would be interesting to learn whether there had been any public pressure to introduce the provisions covered by article 4.

55. Did paragraph 20, which dealt with the rights of persons who were arrested, imply that the rule of habeas corpus applied?

56. Referring to paragraph 23 (2), he said that, at first glance, it appeared to indicate that discrimination might be admissible if it were only partly, rather than exclusively, based on the criteria listed. He would welcome clarification of that important point.

57. The legal provisions set out in paragraph 42 were admirable, but it would be interesting to learn whether and how they were enforced.

58. Finally, he would be glad to have more information on the political parties, institutions and associations which, according to paragraph 47, were working to combat racial prejudice, and on the practical measures taken by the Government to that end.

59. According to the information available to him, which derived from a variety of sources, including reports of the International Labour Organisation (ILO), and annual and specific reports of Amnesty International for 1991 and 1992, there were at least 27 ethnic groups in Bangladesh, 13 of them living in the Chittagong Hill Tracts, an area of some 13,000 km^2. Estimates of the total population, which belonged to the Tibeto-Burmese linguistic family and were for the most part Buddhists, Hindus or Christians, varied between 500,000 and 800,000.

60. The recent history of those peoples had been one of gradual encirclement and dispossession. The first step had been taken in the late nineteenth century by the British authorities, who had enacted legislation limiting migration to the Hill districts. The construction of a dam in the period 1957-1963 had inundated 54,000 acres, representing 40 per cent of the cultivable land, and had displaced some 100,000 people, of whom 40,000 to 60,000 were now in India. The period 1979 to 1983 had seen a policy of large-scale settlement by Bengali colonists from the plains. The result had been the further impoverishment and marginalization of the indigenous peoples, a situation which had led to armed uprising.

61. Guerrilla groups were now active in the Hill Tracts, and the authorities had responded by virtually militarizing the area, so that the ethnic groups found themselves the victims, not only of economic deprivation, but also of institutionalized violence in reprisal for attacks on settlers and military personnel by guerrilla groups. There were an estimated 35,000 or more security troops and police operating in the Hill Tracts, and the Amnesty

International reports gave details of widespread torture and other human rights violations. In one recent incident, several hundred defenceless villagers had been murdered in reprisal for the killing by guerrillas of a Bengali soldier.

62. A policy of forced resettlement had been pursued in the context of the authorities' counter-insurgency strategy. In the areas of resettlement, curfews and restrictions on movement were such that conditions resembled those in military-run camps. The undeclared low-intensity warfare amounted virtually to State terrorism.

63. Members of the Government of Bangladesh had admitted that the entire policy of settlement had been a mistake and that it had compounded the agricultural problems of the area by increasing pressure on the land. While it must be recognized that Bangladesh was densely populated, solutions to its problems should not be sought in policies which were tantamount to invasion and which violated the human rights of minority groups, including their property rights, transforming them in many cases into landless plantation workers.

64. Noting that some development projects were funded by the World Bank and implemented by the military, he asked for further information on current Government policy and in particular on what had happened to the special regulation protecting tribal interests, originally enacted by the British in 1900 and, according to paragraph 9 of the report, still operative.

The meeting rose at 1.05 p.m.

CERD/C/SR.943
24 August 1992

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-first session

SUMMARY RECORD OF THE 943rd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 5 August 1992, at 3.p.m.

Chairman: Mr. VALENCIA RODRIGUEZ

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7) (continued)

Fifth and sixth periodic reports of Bangladesh (CERD/C/192/Add.3) (continued)

1. Mr. YUTZIS, country rapporteur for Bangladesh, continuing the statement he had begun at the end of the previous meeting, said he wished to deal with questions relating to implementation of article 5, paragraph (c), of the Convention. In that connection, it was important that paragraph 9 of the report (CERD/C/192/Add.3) should be seen in its historical context: it was in 1900 that the British had enacted a special administrative regulation designed to protect the interests of the tribal peoples of the Chittagong Hill Tracts, referred to in that paragraph. According to his information, however, that regulation - which provided a measure of protection, notably in regard to land ownership - was not really being applied. The district councils set up under Act No. 89 would appear to guarantee some representation for the ethnic groups of the region. However, that in no way ruled out conflicts of interest, since Bengalis were also represented alongside the various tribal communities, and problems tended to arise between the one and the other, notably in regard to land ownership. That was an extremely delicate and very specific situation, the solution to which was in the hands of the regional authorities.

2. It should be noted that Act No. 89 concerning district councils had no constitutional basis, and could be repealed at any time. In any event, the jurisdiction of the district councils - which included Bengalis - covered only 10 per cent of the land, and according to his information, a substantial part of the land in the region had been placed under military control. Reports indicated that elections to the district councils had taken place under pressure from the military.

3. He would therefore be glad if the delegation of Bangladesh would clarify whether the special regulation of 1900 was actually being applied, what was the reason for the arrival of Bengalis in the Chittagong Hill Tracts, and whether ethnic groups in the region were being effectively protected. According to reliable sources, it would appear that the Government had claimed that the regulation in question was not in force, since it had not been published in the Official Gazette. That was an extremely important question, and an answer should be provided as soon as possible.

4. In regard to article 5, paragraphs (a) and (b), and article 6 of the Convention, information received from various sources seemed to show that there had been occurrences of very long-term arbitrary detention, involving, in particular, one of the founder members of the People's Council of the Chittagong Hill Tracts, who had been held for a year without charge and without his case being investigated, before being released by decision of the Supreme Court. It would therefore appear that the legal system was not guaranteeing adequate protection for the minorities of the Chittagong Hill Tracts. In August 1991, a number of people had been imprisoned without trial and without being told the reasons for their detention. It was alleged that, in May 1991, the Fifth Bengal Regiment, while searching for members of the Shanti Bahini in the region, had assaulted at least 17 civilians; one case

of a person found dead and mutilated and several cases of torture had been reported between April and June 1991. According to reports by Amnesty International and the Anti-Slavery Society, the army had allegedly tortured or assaulted civilians during that period. It was claimed that in October 1991 women had been raped, houses destroyed and Buddhist temples desecrated. Most of those actions would appear to have been committed in the course of counter-insurgency operations.

5. With reference to article 5, paragraphs (d) (vii) and (viii), of the Convention, there had been recent cases in which reports or magazines dealing with the question of the Chittagong Hill Tracts had been seized. It was also a matter for concern that a number of publications had reported attempts forcibly to convert the inhabitants of the region to the official religion of Bangladesh.

6. Forced population transfers in the Chittagong Hill Tracts had been reported for some considerable time. The modernization process admittedly called for some changes in farming methods in the interests of development, but that in no way justified the transfer of entire population groups with a view to replacing food crops by large plantations, which would profit private interests but would not necessarily benefit the minorities living in the region.

7. It followed that there were a series of unsolved problems in Bangladesh which were not covered in the report. He requested the delegation of Bangladesh to confirm or deny the reports he had just mentioned in regard to the Chittagong Hill Tracts, to state whether a distinction could be made between the problems posed by armed struggle and respect for civilian populations, and to indicate how far the process of militarizing the region was to go, to what point a colonization policy directly harmful to the inhabitants was to be pursued, how long the forced resettlements imposed on the latter were to continue, what measures the Government intended to take to protect the ethnic groups of the region and to ensure that their holy places, their heritage and culture were respected, and lastly, what were to be the powers of the district councils, and when was the regulation of 1900 referred to in paragraph 9 of the report to come into force.

8. The Committee's mandate was to monitor implementation of the Convention; as a member of the Committee, despite the respect in which he held Bangladesh, he felt bound to state that that country was not fulfilling the obligations it had assumed in ratifying that instrument. He was well aware of the complexity of the situation in the country, but hoped that in a subsequent report the Government of Bangladesh would supply information enabling the Committee to conclude that the rights and interests - indeed, the lives - of the inhabitants of the Chittagong Hill Tracts were being respected.

9. Mrs. SADIQ ALI said that in view of the remarkable account just given by Mr. Yutzis of the situation in Bangladesh, she would confine herself to only a few questions. Bangladesh's recent return to democracy was encouraging, and raised hopes that a number of problems could now be solved - although the military was always in the background and intervention on its part could not be completely ruled out.

10. A new exodus of refugees from the Chittagong Hill Tracts had begun that year, following the Longang massacre. The Prime Minister, during her visit in May 1992, had been handed a memorandum calling for a political solution to the problems of the region, respect for the land rights of its inhabitants, dissolution of the district councils, rehabilitation of the 60,000 refugees who had fled the country, creation of a safe environment for the hill people and the setting up of a judicial commission to investigate the Longang massacre. Was any political solution to that 16-year-old problem in sight?

11. In regard to implementation of article 3 of the Convention, the Government of Bangladesh had never denied the existence of cluster camps practising "collective farming"; local authorities had even indicated that the collective farms had a two-fold objective: to cut communications between the indigenous Jumma people and the Shanti Bahini forces, and to ensure the future rehabilitation of repatriated refugees. They had indicated that in some areas all returning refugees had been interned in cluster camps for "civilizing" and protection purposes. According to the Chittagong Hill Tracts Students' Council, those living in such camps were subject to very severe restrictions and could not travel without permission. The movements of Jumma villagers were controlled by the military, who had the power to cut them off from essentials such as medicines, clothing and food. There were said to be about 50 such camps in the Chittagong Hill Tracts. In addition to internment, government policy aimed to convert the Jummas to the Islamic faith; as part of an assimilation policy, military personnel were often encouraged to marry Jumma girls.

12. Article 5, paragraph (d) (v), of the Convention dealt with the right to own property. The introduction of 300,000 Bengali settlers from other parts of the country had led to massive violations of the property rights of the hill people; there had been cases of illegal take-overs of land without compensation or resettlement of the persons affected. Colonization of the area should be halted, the many Bengali settlers who had expressed a wish to leave should be given the opportunity to resettle elsewhere, and the land occupied should be restored to the tribal populations: what was the policy of the new democratic Government in that regard, notably concerning the Vested Property Act, under which land owned by tribal populations and Hindus could be taken over by the Government? President Ershad had announced that property seized from the Mandis under the Act would be restored to them, but following his resignation in 1990, the restoration process had been halted. In view of the fact that the Act had been used to violate the rights of minorities, were there any plans to repeal it?

13. With regard to the right to freedom of opinion and expression enshrined in article 5, paragraph (d) (viii), of the Convention, a fact-finding mission had visited the Chittagong Hill Tracts, in November 1990, headed by Mr. W. Telkaemper, a senior member of the European Parliament. The official report published after that mission spoke of countless cases of gross human rights violations and acts of oppression perpetrated against the 12 Buddhist, Hindu and Christian tribal communities who lived there. In that report, the Government was accused of continuing to persecute those populations. The report had been suppressed, and the police had also seized a large number of copies of reports of the international human rights commission. The Chairman of the fact-finding mission had urged the Government of Bangladesh not to

persist in suppressing the report, since to do so would be tantamount to a grave violation of the basic rights of freedom of expression and access to information.

14. Lastly, in regard to article 5, paragraph (e), of the Convention, she would like to know whether the share-cropping system, under which half of the crops went to the landowner, was to be ended and agrarian reforms introduced.

15. Mr. DIACONU said that after reading the report and listening to the statements by the representative of Bangladesh and by the country rapporteur, he was puzzled at what appeared to be two different versions of the situation in Bangladesh. The country, which had 100 million inhabitants, was extremely poor, and it was important to take due account of the development effort currently being made. The report had some encouraging features, for example, the statement that posts in the administration had been reserved for certain ethnic groups, and that a quota system had been introduced for access to education, a policy which amounted to positive discrimination towards disadvantaged sectors of the population - although such discrimination was of course only a stage along the road to full equality. Another encouraging sign was that more schools for minority communities had been opened; similarly, economic planning continued to favour disadvantaged regions.

16. Other points made in the report were less clear. Concerning article 4 of the Convention, it was stated that the authorities had not considered it necessary to adopt measures penalizing racist propaganda, and that in cases of incitement to racial or ethnic discrimination, the criminal law applied, though there was no indication of which provisions of the criminal law would be applicable in such cases, or how they would be put into effect.

17. The information on the implementation of article 5 of the Convention was still far too vague. A number of laws were referred to in regard to freedom of religion, but no actual facts were supplied about the religions practised in Bangladesh, the relationship between them, the existence or otherwise of a State religion, or the attitude of the State towards all those religions.

18. According to paragraph 25 of the report, every citizen had the right to Bangladesh nationality, a statement that was difficult to understand. Did not a citizen, by definition, have the nationality of his country? The phrase certainly called for clarification. While he did not know whether there were any groups or organizations advocating racial discrimination in Bangladesh, previous speakers had described discriminatory activities in regard to this or that minority: if that was the situation, what measures was the Government taking to punish those responsible?

19. In conclusion, he said that he fully appreciated the efforts being made by Bangladesh and the problems it faced in emerging from underdevelopment and guaranteeing a minimum of social order. He nevertheless hoped that as a result of the dialogue initiated with the Committee, the country's problems in the area of racial discrimination might be overcome.

20. Mr. SONG Shuhua thanked the representative of Bangladesh for his introduction of the report and the country rapporteur for his interesting analysis. Some pertinent questions had been raised, and he would like to add a few of his own.

21. First, it was stated that the Chittagong Hill Tracts had some 800,000 inhabitants, 500,000 of whom belonged to tribal minorities; it would be useful to know the exact numbers of those different minorities, their level of education, etc. It was stated in paragraph 11 of the report that a great deal had been done to develop the region and that the hill districts were now more developed than those of the plains; it would be useful to know in what way that was so. Mention was made in another paragraph of more backward regions: were they the districts of the plain or other areas of the country?

22. It was further stated that steps had been taken to facilitate the hill people's access to higher education: what had been done to ensure that such students received training of a high standard? It was stated in paragraph 12 of the report that the conditions of access to employment had been relaxed for the minorities of the Chittagong Hill Tracts, notably in regard to age limits; what was the Government's policy on the matter of child labour? Lastly, with regard to government posts, it would be useful to know how many posts were held by inhabitants of the regions concerned and what percentage of members of parliament and occupants of senior posts came from the Chittagong Hill Tracts.

23. Mr. de GOUTTES fully supported the views expressed by Mr. Yutzis and the comments made by other members. While he agreed that Bangladesh was a very poor country, which was fighting courageously for democracy and against underdevelopment, he had been struck by the omissions in the report under consideration, notably in regard to the discrimination, and even violence, suffered by the minority tribes.

24. A further omission concerned the implementation of the Convention in domestic law. In that regard, the report of Bangladesh contained some faulty reasoning. It was first stated in paragraph 8 that the Convention was not directly enforced in domestic law, but it was later stated in paragraph 18 that Bangladesh had not considered it necessary to adopt specific laws in that connection, since the criminal law was considered adequate. In fact, the provisions of criminal law quoted in paragraph 42 made no reference to acts of a discriminatory, racist or ethnic character. If those were the only provisions of the Penal Code corresponding to the requirements of the Convention, it had to be concluded that the Convention had not been made applicable in domestic law.

25. Mr. BANTON requested the representative of Bangladesh to study the list of written questions he had given him, and to take them into account in his replies. It would appear that Law 97 under the East Bengal State Acquisition and Tenancy Act was not properly observed. Regarding the Vested and Non-Resident Property (Administration) Act of 1974, he would like to know what was the current situation in regard to the abuses that might have resulted from the Act. It would also be useful to know the exact meaning of the claim in paragraph 42 of the report that "adequate legal provision for seeking justice is available under the ... Acts". Why had the legal assistance project of Caritas Bangladesh been stopped prematurely? If a charity was not allowed to provide legal assistance to an oppressed group, should not the Government appoint an ombudsman to take over responsibility?

26. Mr. FERRERO COSTA pointed out that reports should not only list relevant provisions of domestic law, but should also explain how those provisions were

implemented in practice. In view of the importance of the question of the situation of minorities in the Chittagong Hill Tracts, Bangladesh should give detailed replies to the questions raised on the matter.

27. He would confine himself to five comments, which were applicable to other countries as well as Bangladesh. First, while Bangladesh was undeniably encountering special difficulties, those difficulties in no way justified the perpetration of acts of racial discrimination, and did not preclude the Committee from making observations and recommendations with regard to that country. Secondly, while it was important to have information on minorities, general information was also needed on the various regions and races in the country mentioned in paragraph 9 of the report. Thirdly, the fact that ethnic minorities in Bangladesh represented only a small proportion of the total population did not mean that the country could evade its responsibility for taking measures to guarantee their protection. Fourthly, the statement in regard to article 4 of the Convention that the authorities in Bangladesh had not considered it necessary to take any specific measures was unacceptable. Lastly, the Committee was also unable to accept claims as general and vague as those made in paragraphs 1 and 49 of the report, to the effect that racial discrimination was unknown in the country.

28. Mr. van BOVEN said he appreciated the enormous difficulties faced by a country like Bangladesh, which not only suffered from poverty but was also subject to repeated and severe natural disasters. He nevertheless considered that the Committee should apply the same criteria to such countries as it did to others, since the idea that the inhabitants of poor countries might have fewer rights than those of rich countries was unacceptable where human rights were concerned. He pointed out to the representative of Bangladesh that, under the Convention, questions concerning tribal or indigenous populations also came within the Committee's terms of reference. In his view, members of the Committee would help to make the dialogue with States parties more effective by putting their questions in writing, as had been done by Mr. Banton.

29. In conclusion, he would like to raise the important question of forced population transfers. Population transfers occurred in many regions and for a number of reasons. Bangladesh, for its part, was subject to considerable demographic pressures. It would nevertheless be useful to know what the Government's policy was in that regard, whether the populations concerned were consulted, whether any compensation measures were planned, and lastly, what could be done to avoid such transfers.

30. Mr. LECHUGA HEVIA said he would first like to know why the inhabitants of the Chittagong Hill Tracts were not subject to the same administrative regulations as the rest of the population. While he agreed that the economic situation of developing countries did not justify either discrimination or acts of violence against certain population groups, he nevertheless believed that that situation should be taken into account when considering the level of resources available in different countries to meet the population's needs.

31. In reply to an invitation from the CHAIRMAN to reply to the questions and comments of Committee members, Mr. KARIM (Bangladesh) said that he was not for the moment in a position to respond to all the questions raised.

32. The CHAIRMAN proposed that the representative of Bangladesh should be asked to transmit to his Government the questions and observations made during the discussion with a request that the desired information should be provided in its next report.

33. Mr. van BOVEN said that while he understood the difficulties of Bangladesh, he feared that if that country's replies were postponed until the next report, all the benefits of the dialogue that had been initiated would be lost. Why could not the representative of Bangladesh make his statement later in the current session?

34. Mr. FERRERO COSTA pointed out that the Committee's objective was to maintain an effective dialogue with States parties. He considered that the best solution would be to allow the representative of Bangladesh one further day, to enable him to prepare his statement. Replies to questions left pending could be given in the next report.

35. Mr. WOLFRUM said he understood that the representative of Bangladesh might not be able to reply immediately to questions raised, but he believed it would be preferable for the Committee, rather than waiting for the next report, to request Bangladesh to provide the information requested within one year, in accordance with article 9, paragraph 1, of the Convention.

36. Mr. LAMPTEY said the Committee could not force the representative of Bangladesh to respond immediately to its questions. Some States were not even represented at the meetings which concerned them. A very large number of questions had been asked, some of which were of a political nature and would require consultation with the Government. If the representative of Bangladesh could not reply the following day, his country would be able to do so in a year or two's time, which would not prevent continuation of the dialogue.

37. Mr. ABOUL-NASR said the Committee had perhaps gone too far in its questions to the representative of Bangladesh. While the Committee was entitled to ask any questions it wished, provided it revealed its sources, he did not believe it was entitled to pass judgements or to make accusations, as had been done in accusing Bangladesh of State terrorism. The Committee was not a court of law. Bangladesh should be given the opportunity of replying to those questions and accusations, whether it was immediately, the following day, or in the next report; it was for Bangladesh to decide when would be most appropriate.

38. Mr. SHAHI suggested that the representative of Bangladesh should be asked when he believed he would be in a position to reply to the questions raised, and proposed that he should be given time to consult his Government and obtain the information requested. However, the time allowed should not exceed one year, for the reasons given by Mr. van Boven. He pointed out that the country rapporteur for Bangladesh had, in fact, indicated which documents he had used as a basis for his questions.

39. Mr. AHMADU thought that if the Committee's consideration of the reports of States parties was to be improved, it would be better to abandon the system of country rapporteurs. That system did not in fact, reduce the number of questions from members of the Committee. In addition, the Committee ought not to turn itself into a court of law, despite a tendency to do so that he

had observed with regret since he had become a member in 1985. Delegations of States parties, particularly those from third world countries, were intimidated, and representatives of those States in Geneva were unable in many cases to reply to questions. Only the foreign minister or the attorney general would be in a position to give the explanations required.

40. Mr. FERRERO COSTA said that while the Committee was not, of course, a court of law, neither ought it to become a forum for diplomatic negotiations. In his view, the system of country rapporteurs had led to a definite improvement in the Committee's work. As far as the representative of Bangladesh was concerned, he was free not to reply to questions raised, but the Committee, for its part, should not evade any of the stages of its procedure.

41. Mr. SONG Shuhua pointed out that the Committee was a body intended for dialogue, not for confrontation. The delegation of Bangladesh was entitled to decide when it wished to reply. The Committee, for its part, could ask for clarification if there were any points that were not clear to it, but without making accusations.

42. Mr. de GOUTTES said that the representative of Bangladesh had not been provided with sufficient information by his Government. However, that situation ought not to create a precedent, and States ought not to feel free to reply whenever they wished: that would run counter to the measures taken by the Committee to strengthen its capacity for action. He reminded the Committee that it had taken steps enabling it to consider the situation in States parties which had not submitted reports. According to one of its own recommendations, it deemed itself empowered to take account of any source of information when considering a given situation. In addition, the intent of another of its recommendations had been to strengthen the independence of its members. In the present case, the Committee ought not to be content with receiving no reply, even if the representative was entitled not to produce one. As far as possible, the information requested should be provided before the next written report.

43. Mr. YUTZIS, speaking as country rapporteur for Bangladesh, said thought should be given, on the one hand, to the Committee's position in regard to the decision of the representative of Bangladesh, and on the other hand, to the differences of opinion within the Committee on a situation of that kind. Human rights necessarily implied interference in the affairs of States. For his own part, he had cited his sources of information, and would be willing to repeat them for the benefit of the delegation of Bangladesh and the Committee. Those sources had referred to a massacre of over 200 women, children and old men. The least that could be done was to check the truth of that allegation. In such a situation, which concerned the right of minorities, it was essential that the Committee should be in a position to reach a decision on the basis of the procedures it had adopted. If that was to be done, the reply of the State concerned should be provided as speedily as possible.

44. Mr. KARIM (Bangladesh) said he would reply to the questions of the country rapporteur at a later stage. With reference to observations of another member of the Committee, who had referred to such matters as terrorism

and the take-over of indigenous lands, he pointed out that, under article 9 of the Convention, the Committee was required to examine the reports of States parties, not extraneous information.

45. The CHAIRMAN said it was unfortunate that the Committee could not be given immediate replies. He hoped that replies could be furnished quickly, so that the Committee could accomplish its task.

46. Mr. YUTZIS, speaking as country rapporteur for Bangladesh, asked whether the concluding observations normally adopted by the Committee following consideration of a report would on this occasion have to be left pending until such time as the Government's replies were received.

47. The CHAIRMAN proposed that if replies were submitted by Bangladesh in the course of the session, perhaps by the following week, the Committee should draft its concluding observations on that basis. Otherwise, it might adopt a different procedure and base itself on a text by Mr. Yutzis.

It was so decided.

Mr. Karim (Bangladesh) withdrew.

Tenth and eleventh periodic report of Ghana (CERD/C/197/Add.7)

At the invitation of the Chairman, Mr. Amoo-Gottfried and Mr. Blavo (Ghana) took places at the Committee table.

48. Mr. AMOO-GOTTFRIED (Ghana), introducing his country's tenth and eleventh periodic reports (CERD/C/197/Add.7), said that since the document had been prepared, fundamental changes had taken place and were continuing to take place in Ghana. It would perhaps have been better if a more up-to-date report had been presented, but since the Committee had already arranged its schedule, he had decided as a courtesy to the Committee to appear before it to introduce the present report and to provide some additional information.

49. The last census in Ghana, which dated from March 1984, had shown a total population of 12.2 million, about half of whom were under 14 years of age. The annual growth rate was 2.6 per cent, and the average population density 50 inhabitants to the square kilometre. Subsequently, the Ghana Statistical Service had estimated that in 1990 the population had been over 14.5 million. That population was concentrated in the southern administrative regions: Greater Accra, Western, Central, Eastern, Ashanti and Brong-Ahafo. The other regions - Northern, Upper East, Upper West and Volta - were sparsely populated. If the current rate of growth continued, the population of Ghana was expected to reach 19.2 million by the year 2000. In 1984, the population figures for the main urban centres had been: Accra (capital) - 859,640, Kumasi - 399,312, Tema - 180,649, Sekondi-Takoradi - 176,498, and Tamale - 136,828.

50. In ethnic terms the population was homogeneous, but included groups such as the Akans, the Guans, the Ewes the Gas, the Dagombas, the Walas, and the Frafras. The major languages were Twi, Fante, Ga, Hausa, Dagbani, Ewe and Nzema. All Governments of Ghana had been concerned to down play ethnic differences and to forge national integration. Ethnic data were not included

in population statistics, and for a number of years had been banned from official documentation. The official language spoken throughout the country was English.

51. With regard to education, there were numerous technical, secondary, commercial and vocational institutions scattered throughout the country, and three universities: the University of Accra, the University of Cape Coast, and the University of Science and Technology in Kumasi, as well as a number of other specialized higher institutions. It had recently been announced that a fourth university was to be opened in Tamale, in the northern region.

52. In regard to health, reasonably good services existed throughout the country. All regional capitals and most districts had hospitals and clinics, and there were teaching hospitals in Accra and Kumasi. In addition, there were clinics operated by religious organizations and private practitioners all over the country. Herbal medicine also played a role, and there was a Government Herbal Medicine Hospital and Research Centre in Akwapim-Mampong.

53. The population of Ghana was made up of Christians both of the orthodox and Pentecostal faiths (approximately 43 per cent), followers of traditional religions (38 per cent), and Muslims (12 per cent).

54. With a view to achieving the democratic objectives of the Provisional National Defence Council of Ghana, officials of the National Commission on Democracy had undertaken an extensive tour of the country in 1990, in order to invite the views of the population on the future constitution. The report compiled following that tour had been referred to a committee of constitutional experts, which had then made its proposals to the Consultative Assembly. The draft constitution prepared by the Consultative Assembly had been adopted by an overwhelming majority in a referendum on 28 April 1992. The ban on political parties had been lifted on 18 May 1992, and since that date numerous political parties had appeared; thus far, five of them had been registered with the Interim Electoral Commission. Registration enabled the parties to organize campaigns and to hold political rallies. The presidential and parliamentary elections were to be held in November and December 1992 respectively.

55. The new Constitution was to enter into force on 7 January 1993, the date on which the Fourth Republic would come into being. That Constitution contained extensive provisions on the enjoyment without discrimination of all the fundamental rights enshrined in the Universal Declaration of Human Rights, as well as in the Covenants and other human rights instruments. In addition, a review process was now under way designed to bring all Ghanaian law into line with the provisions of the new Constitution; where there were any gaps, the first parliament of the Fourth Republic would introduce the necessary legislation. The Committee's comments would be taken into account in that connection. The next report of Ghana would include the relevant provisions - constitutional, legislative or administrative - concerning the elimination of racial discrimination in all its forms.

56. In addition, the 1992 Political Parties Law prohibited the formation of political parties on an ethnic, regional or religious basis. Such parties could be registered only if their statutes and regulations were in conformity with the principles of the new Constitution.

57. Article 17.2 of the Constitution laid down that no one should be discriminated against on grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status. Chapter 5 of that instrument contained human rights provisions designed to guarantee equality and protection from discrimination. One of the guiding principles of chapter 6 was the promotion of just and reasonable access by all citizens to public services.

58. Under section 9 of the Political Parties Law, the Interim Electoral Commission could refuse to register a party unless it was represented in all the regions of Ghana and organized in at least two thirds of the districts in every region. In addition, it could refuse to register a party if its name, emblem or any other symbol had an ethnic, regional or religious connotation, or gave the impression that its activities were confined to one part of Ghana.

59. A law had recently been enacted setting up a National Media Commission which would be responsible for ensuring that both the private and public media were free, independent and accountable, in the belief that a vigilant and responsible press was a prerequisite for the success of democracy.

60. In December 1991 the Government of the Provisional and National Defence Council had amnestied some 1,000 prisoners. In a spirit of reconciliation, the State security agencies had been instructed to review the cases of all persons in custody on grounds of offences against State security. Subsequently, charges against 17 prisoners had been dropped.

61. He assured the Committee that all forms of racial discrimination as defined in article 1 of the Convention had always been repudiated by the people and Governments of Ghana. Nevertheless, a change in circumstances could well trigger such discrimination anywhere in the world, and accordingly Ghana remained vigilant. The country had condemned oppression based on race, wherever it existed, in the appropriate United Nations forums, and had called for strong measures against countries which practised racial discrimination. Ghana's opposition to apartheid was well known. In recent months, Mr. Nelson Mandela and Mr. Oliver Tambo, current and past Presidents of the African National Congress (ANC), had visited Ghana. The Government had also recently played host to Mr. Makwetu, President of the Pan-Africanist Congress (PAC), as well as to President Nujoma of Namibia.

62. In conclusion, he assured the Committee that his delegation would see to it that the next report was more detailed and informative and that his Government would take careful note of the Committee's observations when preparing it.

63. Mr. LECHUGA HEVIA, speaking as country rapporteur for Ghana, thanked the Ghanaian delegation for having supplied additional information, which should help the Committee to form a clearer picture of the situation in Ghana and of the way the provisions of the Convention were being implemented. He noted that the information contained in the tenth and eleventh periodic reports of Ghana (CERD/C/197/Add.7) was now outdated. Ghana had in fact acquired a new Constitution, which would enter into force in January 1993. In that connection, it would be useful for the Committee to be provided with the text. Ghana was also planning to hold presidential and parliamentary elections, and was returning to a multi-party system, on which it was to be congratulated.

64. The report listed certain laws, such as the 1957 Avoidance of Discrimination Act, which prohibited organizations from engaging in tribal, regional, racial or religious propaganda to the detriment of any other community or from securing the election of persons on account of their tribal, regional or religious affiliations or for other purposes connected therewith, and which made it an offence for any organization whose membership was substantially restricted to any one community to have as one of its objects the exposure of any other organization to hatred, contempt or ridicule on account of its community or religion; the same Act also made it an offence for any political party to use, or permit to be used, any symbol or name which could be identified with any particular community or religious faith. The report also referred to Provisional National Defence Council Establishment Proclamation Law No. 42 of 1982, which required that respect for fundamental human rights and for the dignity of the human person were to be cultivated among all sections of society, and that national integration was to be encouraged, while discrimination on grounds of ethnic origin was to be discouraged. That being said, however, the report did not state whether those laws were still in force or whether they were to be amended, and it would be useful to have information on that point.

65. The report also indicated that the provisions of the Convention had been incorporated into local laws, without specifying whether they had been incorporated into legislation generally. It further referred to a 1984 law on prohibited organizations which appeared to be confined to the Bawku district, and he would like to know whether that law was also applicable in the rest of the country.

66. With regard to the struggle against apartheid in South Africa, it should be noted that Ghana's attitude had always been in keeping with both the letter and spirit of the Convention.

67. On education, an act of 1961 stipulated that no person should be refused admission to a school as a result of his religion, nationality, race or language, or that of his parents, and laid down that education was to be free of charge.

68. He noted, however, that the report was not in conformity with the Committee's guidelines. For example, it gave no information on the demographic composition of the population or on the latest census. The last report submitted by Ghana to the Committee on the Elimination of Discrimination Against Women had contained more recent data on the composition of the population, the number of languages spoken in the country, the demographic composition of the various ethnic groups, and the legal system in Ghana, as well as on the various kinds of courts that existed. That report had indicated that women did not enjoy the same opportunities as men, which would not appear to constitute racial discrimination, since the same situation prevailed in all the ethnic groups in the country. It would seem that Ghana was currently planning to amend its civil and administrative codes, as well as those provisions of the Penal Code which discriminated against women. It would be useful if Ghana could inform the Committee in its next report of any legislative developments affecting the status of women.

69. The Committee would also be glad to have data on infant mortality according to ethnic group, as well as data on employment and on education

programmes. In that connection, a Ghanaian paper, the People's Daily Graphic, had reported on 11 June 1992 that the Minister of Education had made arrangements for papers in rural areas to be published in 15 local languages as part of an adult literacy programme, and that 3 libraries had been set up in each district to enable persons who had completed adult literacy courses to continue their education. The paper had also referred to ethnic conflicts in the north of the country, and he would appreciate information on that subject.

70. In conclusion, he considered that, in view of the changes that had taken place in the country, the Committee should be provided with fuller information to enable it to make specific recommendations.

71. Mr. YUTZIS thanked the Ghanaian delegation for its introduction to his country's report. The further details supplied were evidence of the Government's willingness to continue its dialogue with the Committee.

72. He had gathered from the report and from other sources of information, such as the press, that Ghana was endeavouring to acquire a national identity. In paragraph 6, for example, it was stated that national integration was to be encouraged. In addition, there were laws on the subject, such as the 1984 Prohibited Organizations Law, which banned the formation of any association or organization based on ethnic or tribal feelings. In fact, ethnic feelings were closely linked to a country's historical identity. He would therefore like to know what steps the Government was taking to promote the nation's historical identity while at the same time repressing ethnic feelings.

73. Concerning implementation of the provisions of article 5 of the Convention, he would like to know whether the right to work was recognized in Ghana's Constitution.

74. Mr. WOLFRUM said he would like the information provided by the Ghanaian delegation about the different linguistic groups to be incorporated in Ghana's next written report. He would also like to have details of the constitutional provisions relating to the incorporation of international instruments into domestic law. He too believed that it would have been useful for the Committee to have had the text of the new Constitution before it.

75. He noted that there were several references in the report to "districts", and asked what the relations were between those districts - which appeared to enjoy a certain degree of autonomy - and the Ghanaian Government.

76. Lastly, he would appreciate it if in its next report Ghana could supply information on any amendments which were to be introduced in Ghanaian legislation.

77. Mr. de GOUTTES inquired whether it might not be possible for the Ghanaian authorities to enact legislation enabling the Convention to be directly invoked in the courts.

78. He noted that the Prohibited Organizations Law banned the formation of any association or organization based on ethnic or tribal feelings, and that the Avoidance of Discrimination Act went further in prohibiting political parties from using a symbol or name which might be identified with any particular community or religious faith. He gathered from the explanations

given by the Ghanaian delegation that those provisions would be incorporated in the new legislation: he was not sure that they did not go too far. In that connection, he reminded members that when the Committee had considered the report of Bulgaria in 1991, it had questioned whether efforts to combat racial discrimination ought to extend to banning any party with ethnic connotations even if it had no racist objectives and no intent to discriminate, and had expressed reservations in that regard. He invited the Ghanaian delegation to take that comment into account.

79. In conclusion, he hoped that the observations and suggestions made by members of the Committee would help the Ghanaian authorities to bring the reform of their legislation to a successful conclusion.

80. Mr. LAMPTEY also noted that the report of Ghana was not fully in conformity with the Committee's guidelines, and considered that the whole introductory part of the statement by the Ghanaian delegation should have appeared in a "core" document, which could serve as reference material for all United Nations bodies. He proposed that the Ghanaian delegation should submit such a document, if possible, before his country's next report.

81. It was noteworthy that the Convention had formed part of Ghanaian legislation since 1966, and that Ghana was the second country to have ratified that instrument. Furthermore, Ghana had passed the Avoidance of Discrimination Act in 1957, and the Prohibited Organizations Law in 1984, to give effect to article 4 of the Convention. However, that was not enough. He therefore proposed that the Ghanaian Government should consider, as part of its legislative reforms, the adoption of a new law which would be fully in conformity with the provisions of article 4.

82. He pointed out that a chapter of the new Constitution concerned the Office of the Commissioner on human rights and the administration of justice, and suggested that Ghana should entrust the Commissioner with the task of monitoring implementation of the Convention.

83. Mr. BANTON drew attention to Ghana's long tradition in the field of social research which should assist it in the collection of data relating to racial discrimination.

84. The CHAIRMAN invited members of the Committee to transmit their comments and suggestions on the draft final conclusions concerning Costa Rica, Bangladesh and Greece directly to the country rapporteurs for those countries, namely, Mr. de Gouttes, Mr. Yutzis and Mr. Wolfrum respectively, in order to avoid reopening the debate. He hoped that those documents would be adopted by consensus.

The meeting rose at 6 p.m.

CERD/C/SR.944
11 August 1992

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-first session

SUMMARY RECORD OF THE 944th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 6 August 1992, at 10 a.m.

Chairman: Mr. VALENCIA RODRIGUEZ

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7) (continued)

Tenth and eleventh periodic reports of Ghana (CERD/C/197/Add.7) (continued)

At the invitation of the Chairman, Mr. Amoo-Gottfried (Ghana) took a place at the Committee table.

1. Mr. AMOO-GOTTFRIED (Ghana), replying to questions asked during the discussion of his country's periodic reports, said that one issue raised by the country rapporteur had been the fate of legislation relating to the Convention in the light of the new Constitution about to enter into force. In fact, the laws concerned would remain on the statute book in so far as they were not incompatible with the provisions of the new Constitution, but where necessary the legislation against discrimination would be strengthened. Under the new Constitution, the judiciary would remain unchanged, consisting of the superior courts of judicature and such lower courts or tribunals as Parliament might establish.

2. With regard to the request for information on the infant mortality rate in Ghana, the rate had dropped significantly during the last decade, but he could not unfortunately provide any statistics immediately.

3. With regard to discrimination against women, it had been the policy of successive Governments to promote gender equality in Ghana, and women were guaranteed equal rights to training and promotion. His country was one of the few where women enjoyed the same opportunities as their male counterparts; women had served as members of Parliament and as Cabinet Ministers, and had distinguished themselves as diplomats, accountants, lawyers, economists and in other professions.

4. He confirmed the newspaper report referred to by the country rapporteur which stated that there was currently only one newspaper published in a local language. There were, however, plans to publish it in three other local languages.

5. The country rapporteur had also referred to recent disturbances in the northern part of Ghana. However, what had been described by the press as an ethnic conflict had in fact been a conflict between two groups of people over land rights. The latest disturbance had also involved a dispute over the right to appoint a chief in the area. When such disturbances occurred, the Government took steps to maintain law and order and to mediate between the rival groups.

6. In connection with article 4, paragraph 16, the country rapporteur had drawn attention to the Prohibited Organizations (Bawku District) Law of 1984 and had inquired whether that Law referred specifically to that district or was applicable throughout the country. In fact, the Law had been enacted as a result of disturbances in the District caused by ethnic animosities, but it had national scope, since there was a possibility of such incidents occurring in other areas in the country. Mr. Yutzis had asked how such a law could assist in the realization of national integration. The answer was that Ghana

was not a country with pervasive ethnic differentiation or difficulties. Although its people took pride in their national unity, experience had shown that relatively small groups with extreme ethnic views could create situations resulting in unnecessary conflict, and it was for that reason that the Law had been enacted. Ghana was proud of the diversity of its people, and the cultural traditions of the various groups had been maintained and supported. The prohibition therefore related to groupings with negative and discriminatory tendencies, and was therefore in line with the objectives of the Convention.

7. Referring to Mr. Yutzis' question about the existence of a right to work, he said that chapter 5, paragraph 24, of the new Constitution stated that "every person has the right to work under satisfactory, safe and healthy conditions and shall receive equal pay for equal work without distinction of any kind".

8. Regarding Mr. Wolfrum's question on the demographic composition of Ghana and its linguistic groups, he said that the country's statistical regulations did not permit the compilation of such data, although there was a breakdown of population by regions and towns. However, such data could not be relied upon for the purpose of determining ethnicity. That said, he had noted the comments of Mr. Banton on the usefulness of sociological research in that area.

9. In connection with Mr. Wolfrum's inquiry concerning the role of international treaties in relation to the Constitution, he said that the Constitution, which was the supreme law in Ghana, enjoined the Government in its dealings with other nations to promote and protect the interests of the State; to seek the establishment of a just and equitable international order; to promote respect for international law, treaty obligations and the settlement of international disputes by peaceful means; and to adhere to the principles enshrined in such multilateral instruments as the Charter of the United Nations and the Charter of the Organization of African Unity.

10. Since the Convention had been incorporated into Ghanaian law by an Act of Parliament in 1966, it remained valid under the new Constitution.

11. Mr. Wolfrum had also asked about the relationship between the district and the national political and legal framework. Ghana was a centralized State with 10 regions and 110 districts which, although not comprising a federation, were decentralized to a certain degree. The number of districts would be increased under the new arrangements and they would assume certain functions in order to achieve the country's objectives of participatory democracy. He would recommend to his Government that copies of the new Constitution and laws were made available as accompanying material to his country's next report.

12. In reply to Mr. de Gouttes, he said that it would be possible under the new Constitution to invoke a provision of the Convention in the courts, but where that provision was not self-executing, a specific enactment would be required.

13. Mr. de Gouttes had also asked whether the prohibition of symbols and emblems denoting ethnic, regional, religious or other sectional connotations was not unduly rigorous. It should be pointed out that it was the wish of

neither the Government nor the people of Ghana to eliminate any ethnic differences in society by decree. However, if events in Yugoslavia, Liberia, Somalia and other countries provided a lesson, it was that individuals could take political advantage of ethnic particularities to fan the flames of conflicts that might destroy a nation and a people. Cultural associations, development societies and friendship groups based on ethnicity were not prohibited but indeed encouraged.

14. In conclusion, he said that the suggestions made by Mr. Lamptey, himself a Ghanaian, would be duly brought to the attention of the Government.

15. Mr. SONG Shuhua said it was evident from the reports that the Ghanaian Government attached great importance to fostering its people's culture and traditions in changing social conditions. He asked what proportion of Ghana's large population was fully conversant with English, and more specifically whether interpretation was provided in the courts into and out of other languages.

16. Mr. DIACONU said he did not understand why the Ghanaian Government appeared so anxious to discourage political parties with an ethnic or religious basis. In Europe, for example, Christian Democratic parties were not uncommon, and in his own country, Romania, in particular, ethnically-based parties were an accepted fact. To prohibit such parties might itself create tensions.

17. Mr. SHAHI asked whether the adherents of the various religions practised in Ghana were distributed throughout the country or concentrated in specific areas.

18 Mr. AMOO-GOTTFRIED (Ghana) said in reply to Mr. Song Shuhua that less than 50 per cent of the population could be said to speak English well, and that, while the official language of court proceedings was English, interpretation was provided where necessary.

19. He appreciated Mr. Diaconu's comment, but pointed out that Ghana was concerned to preserve a unified society in the conditions of ethnic diversity created by boundaries inherited from the colonial Powers, which often divided peoples of the same ethnic background.

20. In answer to Mr. Shahi's question, he said that, although Christians and Muslims were to be found throughout the country, the latter predominated in its northern part.

21. Mr. LAMPTEY said that in Ghana there was no one dominant ethnic group, and ethnic diversity was a characteristic feature of the Ghanaian Government, the armed forces and society at large. For that reason, there was no need for ethnic quotas in Government. It should be pointed out that the new Constitution, adopted by referendum, had been drafted by people from every ethnic background.

Mr. Amoo-Gottfried (Ghana) withdrew.

Third and fourth periodic reports of Maldives (CERD/C/203/Add.1)

22. The CHAIRMAN said that, unfortunately, no representative from Maldives was able to be present for the Committee's consideration of the report.

23. Mrs. SADIQ ALI, country rapporteur, said it was to be regretted that the report had again not been drafted in accordance with the Committee's guidelines, although attention had been drawn to the matter during the consideration of the previous reports in 1989. In particular, the then country rapporteur had recommended that the Committee should draw the attention of the Government of Maldives to the information expected on articles 2, 4, 5, 6 and 7 of the Convention, as well as to the need to attach the text of laws where appropriate.

24. The report reiterated that Maldives was not obliged to give effect to the Convention because it had a homogeneous population and that no specific legislation was required to implement the provisions of the Convention. It was a misconception that, because people were of the same ethnic origin, there was no need to give effect to the Convention. All States parties to the Convention were expected in their periodic reports to explain what measures had been taken concerning its implementation, an obligation set forth in article 9 of the Convention.

25. It should also be pointed out that the provisions of article 4 regarding the introduction of specific legislation making racial discrimination punishable by law were not merely intended as guidance for States parties where racial discrimination existed, but were also designed to prevent any recrudescence of the phenomenon.

26. Maldives had experienced an abortive coup inspired by mercenaries from a neighbouring country. It had foreign experts working in its territory, and tourists were likely to increase. Those were additional reasons why it should implement the Convention in full.

27. It was possible that, in the absence of a representative of Maldives during the consideration of the last periodic report, the Government might not have been apprised of the comments made by the Committee. If the Government was still encountering difficulties in the preparation of its reports, it might request the assistance of the Centre for Human Rights through its advisory services.

28. The reporting process assumed that there was a need for constructive dialogue between the State concerned, on the one hand, and the expert body, on the other, and to that end, it was essential for a representative of the State party to present its report to the Committee. The Committee therefore hoped that Maldives, although a small country, would respond to that request.

29. Mr. ABOUL-NASR said the fact that Maldives had no permanent mission in Geneva was another indication that it would be expedient for sessions of the Committee to be held in New York. The Secretariat should contact the Government of Maldives to recommend that it avail itself of the advisory services of the Centre for Human Rights in compiling future reports.

30. Mr. YUTZIS said that a country's size and population were immaterial from the standpoint of fulfilment of its obligations under international instruments. It was similarly of no consequence whether or not a State had a permanent mission in Geneva. The basic issue that concerned the Committee was the political will of a State to comply with its obligations, financial and otherwise. When communication was established with Maldives, it was important to stress the commitments it had assumed in signing the Convention.

31. Mr. de GOUTTES supported the views expressed by the country rapporteur. He welcomed the fact that Maldives had submitted a report, but regretted that it did not conform to the Committee's guidelines. The report stated that there was "no form of discrimination" in Maldives and that therefore "no specific legislation" had been enacted to implement the provisions of the Convention. The Committee's conclusions should emphasize that, under article 4 of the Convention, States parties had an obligation to enact legislation to condemn and prevent discrimination.

32. Mr. ABOUL-NASR disagreed with Mr. Yutzis that it was of little significance whether or not a country had a permanent mission in Geneva. The Committee's aim was to use its experience to help countries, and to promote the discussion and solution of their problems.

33. Mr. YUTZIS said that some small countries applied for assistance from the advisory services of the Centre for Human Rights in drafting their reports. A recommendation that Maldives should avail itself of such assistance should be included in the Committee's conclusions.

Fifth periodic report of Colombia (CERD/C/191/Add.1)

At the invitation of the Chairman, Mr. Eduardo, Mrs. Galvis and Mr. Mestre Sarmiento (Colombia) took places at the Committee table.

34. Mr. MESTRE SARMIENTO (Colombia) said that, as stated in the introduction to the report, the election of the Constituent Assembly had united the various forces in Colombian society and paved the way for democratic reconciliation. The safeguarding of human rights and the protection of minorities were uppermost in the minds of decision makers. Colombia had many minorities, mainly due to the flow of immigrants into the country over a long period, which had resulted in the creation of a multiracial society. The report stressed the importance attached to defending the cultural inheritance of all indigenous communities, and to their contribution to the national culture. It also described the innovative efforts made by the Government to protect the Amazon Basin, which it believed should be viewed as part of the common heritage of mankind, and the environment. Since the submission of the report, Decree No. 436 of 10 March 1992 had established the National Indigenous Policy Council, and Decree No. 716 of 28 April 1992, the National Committee on Indigenous Rights to coordinate the protection and promotion of the human rights of indigenous communities.

35. Mrs. GALVIS (Colombia) said that the rights of minorities in Colombia were protected by a number of articles in the Constitution. Article 5, for example, recognized, without discrimination, the primacy of the inalienable rights of the person, and recognized that the family, as the basic institution of society, was entitled to protection. Article 7 recognized and protected

the ethnic and cultural diversity of the Colombian nation. Under article 8, the State and the individual alike had an obligation to protect the country's cultural and natural heritage. Article 10 provided that, while Spanish was the country's official language, the languages and dialects of the various ethnic groups also had official status within their respective territories. Teaching in communities which spoke such languages and dialects was required to be bilingual.

36. Article 43, which provided that men and women should enjoy equal rights and opportunities, was applicable also to indigenous minorities. Under article 286, the indigenous territories were described as autonomous entities on the same footing as other territorial entities of the country. They enjoyed the right to manage their own interests and to administer their own resources, and were entitled to self-government by their chosen authorities. Finally, article 246 provided that such indigenous authorities could exercise legal jurisdiction within the limits of their territories, provided that such jurisdiction did not conflict with the Constitution or the laws of the Republic. Legislation was to be adopted to ensure that such jurisdiction was brought into line with the national judicial system.

37. Mr. EDUARDO (Colombia) said that in pursuance of the constitutional provisions just referred to, a National Indigenous Policy Council had been set up, consisting of three senators and four representatives elected by the indigenous communities. It helped to promote the interests of those communities, notably by defining priority areas for social welfare assistance, as provided for under article 357 of the Constitution.

38. The Council was currently studying draft legislation on the indigenous communities, which was to be submitted to Congress. That legislation provided for a National Committee on Indigenous Rights, a standing body whose function would be to coordinate activities for the prevention of any violations of the rights of indigenous peoples, whether enshrined in the Constitution or in covenants and treaties signed and ratified by Colombia.

39. The Government was currently monitoring the environmental impact of construction and prospecting operations in various parts of the country, including indigenous areas. Two such projects, one in Chocó and another at the airport of Punto Mayo, had been halted because of the risk of damage to the environment. The National Committee for Indigenous Linguistics, referred to in paragraph 45 of the report, had assisted in the training of 20 language experts, 15 of whom were indigenous. Efforts were being made to adapt school curricula to the needs of indigenous communities, and as many as 30 regional projects had been prepared. Under the "Alvaro Ulcué" fellowship fund, referred to in paragraph 47, 120 indigenous students had received grants for higher education. In general, the Government was constantly endeavouring to make authorities at all levels more aware of the rights of indigenous peoples.

40. He assured the Committee that Colombia had the political will to apply policies which would implement the provisions of the Convention, so that those provisions would become part of the everyday life of the people. It believed that, despite the difficulties it was facing, it had succeeded in creating a society in which minorities and indigenous peoples played their full part.

41. Mr. WOLFRUM, country rapporteur, said he felt some hesitation, in the light of Colombia's internal problems, in judging its record in complying with the Convention by the same yardstick as that applied to other States, such as, for example, Greece or Belgium. He congratulated the Government of Colombia on the regularity with which it had submitted its reports, and on the information they contained.

42. While the report (CERD/C/191/Add.1) was basically drafted in accordance with the Committee's guidelines, it did not provide details on the demographic composition of the population. While data was given concerning indigenous communities, no information was provided about other ethnic minority groups, and the Committee would be glad to be told more about such groups, and the extent to which they were integrated into Colombian society. The report was to some degree supplemented by Colombia's third periodic report on implementation of the International Covenant on Civil and Political Rights, as well as by the report by the Special Rapporteur on religious intolerance. He recommended that in preparing its next report, Colombia should make use of the newly introduced system of including a "core" text relating to reports under other human rights instruments.

43. On the subject of the newly elected Constituent Assembly, it was stated in paragraph 7 of the report that the two representatives of the indigenous peoples in the Assembly had "obtained the support of the people in the elections". Did that phrase imply that members of indigenous communities could not be elected without the support of other, non-indigenous citizens?

44. The report further stated in paragraph 18 that the Convention could now be invoked before the national authorities. He would be interested to know whether there had been any actual cases of the Convention being invoked, and whether there were any court rulings referring to it. The representative of Ghana had recently stated that when his country's new Constitution had been drafted, extensive reference had been made to the Convention, as well as to other human rights instruments; had such reference been made when Colombia's new Constitution had been prepared? Were the international obligations derived from the Convention binding in Colombian law, or could they be overruled by subsequent legislation? At the time the previous report had been submitted, the representative of Colombia had stated that his Government intended to make the declaration referred to in article 14 of the Convention: had it in fact yet done so?

45. While both the written report and the oral statements had referred frequently to the legal system and to the Government's plans and policies, very few concrete examples had been given of how that system and those policies worked in practice. He regarded that as a major deficiency, particularly in the light of the internal difficulties currently faced by Colombia. Paragraph 20 of the report stated that the Government had reached an agreement on demobilization and disarmament with the Quintin Lame Armed Indigenous Movement, which was the fourth such movement to have decided to "return to civilian life". Could the representatives of Colombia explain what were the objectives of that movement, who were its members, and why it had capitulated: had its demands been met, or had it simply been overpowered? Did any other similar militant groups still exist, and what was the prospect of their returning to civilian life and democracy?

46. He would like to reiterate the question raised at the time of consideration of the fourth periodic report, namely, what the outcome had been of the commission of inquiry set up to investigate three incidents in the Chocó region in 1987 concerning mining rights. That question was of particular interest to the Committee, since the incidents had led to the killing of three Arhuaco leaders. The Government's silence would seem to imply that it had no great interest in shedding light on the matter.

47. Paragraph 23 of the report indicated that a number of measures had been taken to recognize the rights of the indigenous peoples and to assist them with specific policies, but again no details were given: more specific information would have been appreciated. Paragraph 26 referred to the setting up of "indigenous reservations": that term had already given rise to some unease among members of the Committee, and he would like to know more about the status of such reservations, and the system of land ownership operating in them. As he understood it, the Colombian representative had said that, in his Government's view, the Amazon region should be regarded as part of the common heritage of mankind. That would be a revolutionary approach in terms of international law, and he wondered whether it was shared by other countries in the Amazon region. It was a view which, incidentally, he himself wholeheartedly endorsed.

48. Paragraph 32 stated that indigenous communities were guaranteed the right to use renewable natural resources on their lands: who then had the right to exploit non-renewable resources, especially hydrocarbons? On the assumption that non-renewable resources were the property of the State, which could grant concessions for exploitation, would the indigenous populations benefit when such concessions were granted in areas where they were owners of the land? Were such lands owned by individuals or by tribes, and in the latter case, how had the tribes been organized to enable them to express their corporate will?

49. Paragraph 32 of the report also referred to the existence of indigenous inspectors of natural resources: were those inspectors appointed by the indigenous communities or by the State, what were their functions, and what were they intended to achieve? He had some misgivings on the subject, since the representative himself had stated that some projects in the Amazon region had been halted because they were environmentally damaging. Logging should properly come under an indigenous authority, since timber was a renewable resource. There had been numerous reports at the Rio Conference of environmental contamination and acts of violence in the region, and he would like to know how far the Government had succeeded in putting a stop to them, and whether any compensation had been paid to the Indian people.

50. He would have appreciated more information about the efforts being made to improve the economic situation of indigenous peoples: for example, were there any statistics on their income and unemployment rate as compared to the rest of the population? What was the chief source of income of such communities? The efforts being made to improve the education of indigenous peoples, referred to in paragraphs 43 to 47, were laudable, if limited, and clearly complied with the requirements of article 1, paragraph 4, and article 2, paragraph 2, of the Convention.

51. The policy of associating protection of the indigenous population with conservation of the environment (paragraphs 48 to 50) was most promising,

although it would be interesting to know more about the "areas for special management", and how such areas differed from reservations. Colombia's report to the Human Rights Committee stated that over the last 4 years, 72 reservations had been set up covering an area of 13 million hectares, with a resident population of 27,000. He would appreciate more information on the status of those reservations, and how the system operated.

52. Paragraphs 50 to 85 of the report outlined the policy pursued by the Government to improve the legal, economic and social situation of the indigenous communities, and that information had been supplemented orally. Those policies were commendable, but similar projects had been referred to in previous reports and further information would therefore be welcome on progress since 1988.

53. Specifically, paragraph 50 raised several questions. With reference to subparagraphs (f) and (g) of the section on land and natural resources, did the Government review the title to reservations set up in the colonial period? In subparagraph (a) of the section on State administration, what was meant by "coordinating bodies"? In subparagraph (c) of the section on the land and natural resources programme, what was meant by the statement that some communities had "lost their land"? To whom and why had it been lost, and what action had the Government taken? What was the infant mortality rate and what was the life expectancy of members of the indigenous communities compared with that of the rest of the population?

54. With reference to paragraph 63, it was not clear whether the education of indigenous pupils was bilingual, although information provided orally indicated that it was. Colombia's report to the Human Rights Committee was more specific in that regard, stating that Decrees No. 88 of 1976 and 1142 of 1978 recognized ethnic pluralism and established the right of indigenous communities to a bilingual and bicultural education. A 1984 resolution called for curricula to be based on the principles of ethnic development and ethnic education and proposed that indigenous communities should determine the content of their own curricula. Had those Decrees and that resolution been properly implemented, and did bilingualism apply only to indigenous communities or to the rest of the population as well?

55. On the subject of the implementation of article 3 of the Convention, the Government of Colombia reiterated that it had no political, diplomatic, military, cultural or sporting links with the Government of South Africa, a statement which had never been questioned in the Committee.

56. The brief account of Colombia's implementation of article 4 of the Convention (paragraphs 92 to 95) could not be deemed to reflect full implementation of article 4. He reiterated the Committee's constant concern and plea that legislation should be enacted in conformity with that article.

57. With reference to article 5 of the Convention, the report contained information on the implementation of the right to equal treatment before the tribunals and the right to personal safety and to take part in elections, but did not cover all aspects of article 5. He drew particular attention to the right to personal safety. He did not wish to overemphasize the point because, as the representative of Colombia had said, the country was in a state of transition and there clearly was the political will to deal with the serious

difficulties facing it and indeed to enact legislation. He would, however, have appreciated more information on practical measures taken or planned, for instance, against military or paramilitary groups. In general, that section of the report was too vague and he reiterated the request made during the discussion of Colombia's initial report that more information should be provided on the enjoyment of political and cultural rights by the indigenous peoples and other minority ethnic groups, with comparative figures on education, per capita income, housing, medical care and representation. He would like to know how the Constituent Assembly was elected and what means were available to indigenous communities to secure representation.

58. The measures to implement article 6 that were reported in paragraphs 114 to 123 were impressive, particularly the availability of a telephone line enabling individuals to report, free of charge, any threat to or restriction of the right to life or freedom of a Colombian citizen. He wished to know to what extent citizens availed themselves of such facilities.

59. Mr. BANTON said that invasions by colonists of the land of the indigenous peoples had been reported from many parts. Would it be unfair to conclude that the Government did not have the power to prevent them? In regions where the central Government was weak, was it not particularly important to secure lines of communication with the representatives of the local people? Were the security forces instructed in the importance of working with organizations which sought to protect human rights and historic land and water rights? By organizations he meant any kind of organization, whether formally registered or not, including traditional village organizations.

60. The fifth report described policies designed in the capital, but the impression it conveyed conflicted with accounts of the present situation in many rural areas. For example, the Guaviare Indians in eastern Colombia were now distinguished less by their ethnicity than by their position as a depressed class of poor agricultural workers in a society dominated by whites. With the spread of the market economy they had been drawn into economic relations without understanding the rules that were meant to govern them or how they could best protect themselves. Their traditional knowledge, institutions and experience were now no longer valid or meaningful. The Government's report did not acknowledge that reality.

61. Reports on the situation on the Pacific coast indicated that the rain forest was being destroyed by lumbering and mining companies, with, apparently, little restraint from a Government that had made major concessions in the development plan, PLAIDECOP, in order to attract outside investment. Land rights were being infringed, while the changes brought disease, contamination and violence to the Indian and black communities alike. Colombia should report on the actual payment of compensation to the local people for the damage to their environment, not just about laws which might or might not be observed in practice.

62. The Human Rights Committee had asked for further information about measures to protect rights under article 27 of the International Covenant on Civil and Political Rights, and it would be useful if Colombia's replies could be reproduced in its next report to the Committee on the Elimination of Racial Discrimination. In addition, he wished to know whether the indigenous peoples

were required to register births and deaths. Where figures were not available, estimates from authoritative sources would be welcome. Figures on elections, for example, would be useful.

63. With reference to paragraphs 121 to 123 of the report, it would be helpful to have an estimate of the effectiveness of those measures in different regions. Details of incidents in which the perpetrators of violence towards indigenous people had actually been convicted, and the punishments imposed, would be welcome, as would details of action actually taken against lumbering and mining companies which had failed to comply with the official conditions for their operations. Like Mr. Wolfrum, he understood the terrible problems with which the Government had to contend, and candid appreciations of the actual effectiveness of the measures pursued would therefore be respected.

64. Mr. de GOUTTES welcomed the additional information provided orally, especially on the new constitutional Charter which had entered into force in July 1992. As Mr. Wolfrum had said, Colombia's internal problems made it very difficult to consider the situation in Colombia within the sole perspective of the Convention. He wished to draw attention to two particular shortcomings in the report. One was the failure to pass legislation to implement article 4 of the Convention. The Committee had often observed similar shortcomings in the reports of other States parties and had always stressed the importance of legal anti-discrimination provisions if only for preventive purposes. The legal provisions referred to in paragraph 105 of the report in connection with article 5 of the Convention were not specifically relevant to racial discrimination.

65. The report was informative but on the whole too legalistic and not sufficiently specific. Practical information was required on human rights violations of all kinds, not just against indigenous peoples but against any other underprivileged sectors of the population, and concerning acts of violence perpetrated, for instance, by military or paramilitary groups. Abductions of children by death squads, violence against rural dwellers in guerrilla areas and other violations had been reported. He drew attention to two highly informative reports, the most recent report of Amnesty International, and a report produced by the Attorney-General of Colombia.

66. Mr. DIACONU said that the difficulties experienced by the Colombian Government inevitably affected the measures it had taken or would take and the results it could expect. The report was to be commended for its comprehensive coverage of implementation of the Convention in regard to the rights of indigenous peoples. It failed, however, to refer to other parts of the country and he would appreciate further information on the origin of the population in those areas.

67. He had been surprised to find no reference to any legal instruments specifically prohibiting discrimination on grounds of race, ethnic origin, etc. Paragraph 18 of the report stated that the provisions of the Convention "might" be invoked before the national authorities which in turn "might" enforce it directly, which equally implied that it or they might not. There was no way of ensuring the implementation of the Convention if there were no legally binding stipulation to that effect.

68. He had doubts about the accuracy of the statement in paragraph 92 that violations of the human rights of any individual were punishable offences under Colombian legislation, since it was improbable that all violations were punishable offences in any country. He agreed with previous speakers that the explanations given about the implementation of article 4 did not suffice, and hoped that the next report would provide more specific information.

69. Mr. FERRERO COSTA said it was clear that, despite its many problems, the Government of Colombia had the political will to implement the Convention. It was to be commended for submitting its periodic reports on time and for its willingness to enter into a dialogue with the Committee. It was true that the report now before the Committee focused on the indigenous peoples to the exclusion of other groups, but a commendable effort had been made to answer the questions raised during the consideration of its previous report.

70. He agreed that the complex internal situation of Colombia made it difficult to examine Colombia's implemention of the Convention in isolation. The two major problems of terrorism and subversion and the fight against drug trafficking were also issues of concern to other human rights treaty monitoring bodies. Referring to the records of the previous Committee session at which Colombia's reports, and specifically its internal problems, had been discussed, he recalled the Committee's commendation of the Colombian delegation's frank acknowledgement of its difficulties and shortcomings. He endorsed Mr. Wolfrum's proposal that Colombia should prepare a core document providing general information of interest to all human rights treaty monitoring bodies.

71. It was clear that the Colombian Government still needed to take further steps to implement the Convention fully. For example, Colombia's internal difficulties should not prevent it from adopting specific legislation with regard to article 4.

72. With regard to access to the judiciary by the indigenous population, the Government appeared to be aware of the difficulties of access by indigenous peoples.

73. The comment by Mr. Wolfrum on the representative of Colombia's statement that his Government regarded the Amazon Basin as part of the common heritage of mankind called for some clarification. He was sure that there had been no intention of suggesting that the Amazon Basin might become an area under international jurisdiction, and there was certainly no joint or individual proposal to that effect. The statement was merely one of goodwill emphasizing the importance of the Amazon Basin to humanity and the world at large from an environmental point of view.

74. Mr. SHAHI referred to Colombia's policy of granting land to indigenous communities, as reported in paragraphs 28 and 50 of the report, and hoped that the next report would specify the exact number of hectares granted to indigenous communities which had no land or insufficient land. He would also welcome further information on the black population and its full enjoyment of civil rights. Referring to Mr. Banton's statement, he wished to know what was

the extent of invasions by colonists, such as miners or developers, of the land of indigenous peoples and what action the Government was taking to stop them. If those reports were true, the indigenous population was not being protected. In the reservations set up, could the indigenous peoples hold land individually or only on the basis of communal ownership?

75. Finally, with regard to the comprehensive, complex machinery set up to implement article 6 of the Convention, he wished to know how many cases had been brought to those judicial authorities and settled by them.

The meeting rose at 1.05 p.m.

CERD/C/SR.945
3 September 1992

ENGLISH
Original: FRENCH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-first session

SUMMARY RECORD OF THE 945th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 6 August 1992, at 3 p.m.

Chairman: Mr. VALENCIA RODRIGUEZ

The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (item 7) (continued)

Fifth periodic report of Colombia (CERD/C/191/Add.1) (continued)

At the invitation of the Chairman, Mr. Mestre Sarmiento and Mrs. Galvis (Colombia) took places at the Committee table.

1. Mr. van BOVEN said he wished first of all to welcome the Colombian Government's participation in the activities of human rights bodies. For example, the Government had on several occasions, invited working groups, such as the Working Group on Enforced or Involuntary Disappearances of the Commission on Human Rights, and rapporteurs such as the Special Rapporteur of the Commission on Human Rights on the question of torture, to visit Colombia. It was all the more regrettable that those various efforts had been so unproductive, particularly with regard to protection of the right to life and security of person.

2. It could be seen from a reading of the report under consideration (CERD/C/191/Add.1) that indigenous groups, like the rest of the population, suffered from the acts of violence perpetrated in Colombia. He would like to know to what extent the indigenous populations were affected by the violence, whether they were its sole victims, or whether they also participated in it. The report also contained little information on the black population and immigrants.

3. He noted with satisfaction that ecological issues were taken into consideration in the implementation of certain projects and that other projects which were harmful to the environment had not been carried out.

4. It was also stated, in paragraph 21 of the report under consideration, that indigenous groups were scattered throughout 25 per cent of Colombian territory and had their own social and cultural world, while paragraph 29 referred to reservations (resguardos); it was permissible to ask whether the necessary conclusion was that the reservations occupied 25 per cent of Colombian territory or whether there were concentrations of indigenous people in other regions of the country. He considered that the question of reservations was a specific issue which should perhaps be considered jointly with the Working Group on Indigenous Populations of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities.

5. Mention should also be made of a contradiction between paragraph 12 of the report, which stated that Colombia had acceded to ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries and that it had incorporated that instrument in its domestic legislation, and paragraph 56, where it was stated that the Congress of the Republic would undertake to adopt and ratify that Convention. He would welcome clarification on that issue.

6. He also noted that article 4 of the Convention was not being implemented in the requisite fashion, since domestic legislation in that regard was inadequate in respect of the obligations undertaken under the provisions of that article.

7. Concerning the implementation of article 5 of the Convention, he noted that the information contained in the report related basically to civil and political rights, and scarcely at all to economic, social and cultural rights. It was to be hoped that the next report from Colombia would contain more information on the exercise of the latter rights.

8. With reference to article 6 of the Convention, he noted that the Colombian Government had given little information about the recourses available to the victims of discrimination for obtaining compensation; it would be desirable if the Colombian authorities were to furnish more details in that respect in their next report.

9. In conclusion, he expressed the hope that Colombia would decide in the near future to make the declaration provided for in article 14 of the Convention.

10. Mr. ABOUL-NASR, referring to paragraph 24 of the report under consideration, said that the distinction made between the State, the indigenous peoples and society was disturbing. The indigenous population was in fact part of society and could not be dissociated from it.

11. He considered that, contrary to what was stated in paragraph 48 of the report, the policy for the protection of the rights of the indigenous peoples should be separated from the measures taken for the conservation and preservation of the environment. Indigenous persons were human beings who had rights and not a disappearing species whose survival was closely linked to protection of the environment.

12. Mr. MESTRE SARMIENTO (Colombia) thanked the members of the Committee for the interest they had shown in the report under consideration and in the situation in Colombia.

13. Before replying to the questions asked by members of the Committee, he wished to present some explanations regarding certain comments they had made. First of all, the report itself was a document which had been prepared just over a year previously by a country which had embarked on an extremely complex political process. The Constituent Assembly responsible for drafting a new Constitution had been democratically elected in 1990. The stakes involved in that process were vital to the country's future, which explained why the authors of the report had stressed that point. He acknowledged, however, that there were gaps in the report, and he would inform the competent authorities in order to enable them to fill in those gaps.

14. Referring to the comments made by Mr. Wolfrum to the effect that, in order to understand the situation in Colombia, it was necessary to take into account the transitional regime in which it now found itself, he regretted that the rapporteur for his country's report had not clarified his idea by stating what transition was involved. He also wished to emphasize that the Colombian authorities had never craved the indulgence of any United Nations

body in the consideration of its reports on the grounds of the problems confronting the country. All they wanted was an objective assessment of the situation. Colombia was a democratic and open country which was not afraid to air the problems it faced, such as drugs or violence. There was no perfect democracy, there were only perfectible democracies.

15. With regard to discrimination, he pointed out that that was a concept of the colonial Powers and not of countries such as Colombia which had experienced miscegenation.

16. In connection with the indigenous peoples, it should be recalled that Colombian territory extended over 1 million sq. km, only one third of which belonged to civilization of the Western type. That third was inhabited by 90 per cent of the population. The indigenous groups, which had survived the conquests of the fifteenth, sixteenth and seventeenth centuries, lived in the two enormous basins of the Amazon and the Orinoco. These regions were difficult of access and the integration of such groups had been the constant concern of the country's authorities. It was not a question of preserving them or of establishing a discriminatory regime, but of protecting them against exploitation and massive deforestation and of helping them to conserve their habitat and their culture.

17. He also disagreed strongly with the interpretation given by Mr. Wolfrum of his remarks on environmental protection. He recalled that, some years previously, UNESCO had included Cartagena in the heritage of mankind, and it would never have occurred to him that that could be a stratagem of the colonial Powers aimed at laying hands on that magnificent city. In fact, the whole planet was the heritage of mankind, and it was up to both the international community and each individual country to endeavour to preserve it. In that connection, the Amazon Basin was undoubtedly of cardinal importance for the climate and the environment, but there was no question of Colombia renouncing its sovereignty or rights, or of its derogating from its international obligations.

18. Referring to the questions raised, and first of all to that of the representation of indigenous inhabitants in the Constituent Assembly, he said it should be pointed out that the two indigenous people who were members of the Constituent Assembly had been appointed during elections in which the entire Colombian population had participated. On the other hand, the representation of indigenous people in Congress derived from a constitutional guarantee. Article 171 of the Constitution stated that the Congress consisted of 100 members elected in the ordinary constituencies and two members elected in the special constituencies by the indigenous communities. Taking into account the change in the status of certain territories in the indigenous regions, which had become departments, the number of indigenous inhabitants in the Chamber of Representatives had increased.

19. Regarding the status of international instruments in domestic law, it should be pointed out that international legal instruments prevailed over domestic legislation and that national laws must comply with international law.

20. In connection with the agreement on demobilization and disarmament signed by the Government and the Quintin Lame Armed Indigenous Movement, and with the

question of guerrilla warfare, it should be mentioned that the phenomenon had begun to emerge at the end of the 1950s. By the end of the 1980s there had been six guerrilla groups, the most important of which, in descending order, had been the Revolutionary Armed Forces of Colombia, the National Liberation Army, the 19 April Movement (M19), the People's National Liberation Army and the Quintin Lame Armed Indigenous Movement. Since assuming power, President Virgilio Barco had pursued a policy of peace which had begun to bear fruit at the end of his term of office with the peace agreement between the Government and the M19 Movement. The Movement had become a political party which was now represented in the Government, in Congress and in the Constituent Assembly and which enjoyed widespread acceptance among the population. Two other movements, the Revolutionary Armed Forces of Colombia and the National Liberation Army, were continuing guerrilla warfare and peace efforts had so far been unsuccessful. Guerrilla activity and violence in Colombia were now linked to the social and economic phenomenon of narcotics.

21. There would seem to have been a marked increase in poppy cultivation in the country, particularly in the Department of Cauca. A cooperation agreement had been signed between the Government and the indigenous communities to combat the phenomenon. The problem of drugs, none the less, went beyond the frontiers of Colombia and was an international problem. No single country, however powerful, could tackle it without the cooperation of the international community and unless there was a special international tribunal with responsibility for trying cases involving the crime of drug trafficking. The youth of the wealthy countries could not be rescued by persecuting Colombian peasants. Colombia had already paid a heavy price as a result of the narcotics traffic. Judges, candidates for the Presidency of the Republic, advisers and many citizens had been assassinated. The drugs trade was now closely linked with guerrilla activities. The laboratories required for poppy processing and the landing strips essential for transporting the merchandise were often to be found in very isolated regions, controlled by the guerrilla movements, which were used by the traffickers to protect their traffic. It should not, however, be forgotten that coca leaf was also a cultural phenomenon in the Andean region, where it was a part of daily life among the indigenous peoples, who used it for medicinal purposes. In that connection it should be recalled that, at the previous World Health Assembly, the President of Bolivia had proposed that an organization such as the World Health Organization should be entrusted with research into the medicinal properties of coca leaf. What had transformed that traditional crop into a problem was the arrival of chemists with their products essential for the manufacture of coca paste.

22. A question had also been raised regarding mining, and in particular the deposits of hydrocarbons and coal on indigenous land. Colombian legislation was clear on that issue: any mine situated on land governed by title predating 1986 belonged to the owner of the land in question. In other cases, the subsoil resources belonged to the nation. Two cases had arisen of communities wishing to assert their mining rights. The first was a population of indigenous origin which claimed rights over a substantial coalmine situated in the Department of Guajira; so far the community had obtained a ruling that income from the exploitation of the mine was to be paid into a frozen account, pending settlement of the issue in court. The second case related to the recent discovery of an exceptionally promising petroleum deposit in the Department of Casanare over which an indigenous community had asserted its

rights. If it won its case in the courts, it would be the owner of the deposit; if not, ownership of the deposit would revert to the nation, but even then, the community concerned would benefit from the exploitation of the deposit, since the operator would have to pay dues to the municipalities situated on the land concerned.

23. Some members had regretted the absence of statistics on the indigenous communities, such as average income in comparison to the rest of the population, life expectancy, etc. Such information should be submitted separately, and Colombia would endeavour to provide it in its next report. However, it should be stressed that statistics concerning such communities were of relatively recent date: as could be seen from paragraph 29 of the report, the great majority of resguardos had originated after 1967. Most of the ethnic groups lived in great isolation, in underpopulated regions. The State had tried to make the basic elements of welfare available to them, but it was clear that, because of their precarious living conditions, it was difficult for them to derive maximum benefit and that their average income was probably very low.

24. Mrs. GALVIS (Colombia), referring to the events in Chocó in May 1987, stressed that that conflict, which was the concern of the Presidential Adviser for Human Rights, had not related to mining deposits and had not been a confrontation between indigenous communities and the Government, but had rather been a matter of rivalries between two neighbouring tribes in Chocó. The Government had acted as arbitrator and tried to reconcile the two parties and to restore peace and security, in compliance with the function entrusted to it, which it would continue to fulfil. Colombia had kept the competent international bodies duly informed of those events, and she was surprised that a question had been raised on the issue at the previous meeting.

25. The Colombian Constitution recognized the international instruments ratified by the Government, and in particular the Convention, as sources of law which could be invoked before the country's courts. Referring to article 4 of the Convention, she said it was true that the crime of racial discrimination was not specifically provided for in the Colombian texts, apart from the relevant provisions of the Penal Code. Colombian society was, however, basically miscegenated, and the very notion of racism was totally alien to it. For her part, in her career as a lawyer, she could not recall ever having heard a reference to complaints of racial discrimination. Of course, that was not to say that there were no inequalities in Colombia, but they were due to other reasons. The text guaranteed "all persons", and therefore each member of all the ethnic groups and all the cultures which made up Colombian society, the same fundamental rights in all fields. The problem of racism did not have the same dimension as it did elsewhere, in multi-ethnic societies, so that the problem of defining and penalizing racial discrimination in terms of criminal law had not been regarded as a priority by the legislature. To accord the same treatment to all was natural in Colombia, whose population took pride in constituting a "universal race". The Colombian Government would, however, be informed of the Committee's wish that greater attention should be paid to article 4 of the Convention.

26. She also explained that the traditional territorial unit of the indigenous communities was the resguardo, a district of colonial origin which the Government had not yet abolished, since it made it possible to preserve

the cultural unity of the indigenous inhabitants. The resguardos were not reservations or other places where indigenous people were brought together, as seen elsewhere. They were administrative units which were intended to encourage the preservation of the indigenous communities and which were comparable, particularly at the administrative and judicial level, to municipal authorities. Under the Colombian Constitution, such territorial units were regarded as full-fledged municipalities. As had been said at the previous meeting, the resguardos had their own administration and were subject to the authority of an indigenous governor who was really a chief executive responsible for promulgating and implementing the law and for establishing a judicial system compatible with the practices of the community concerned, the sole restriction being compliance with the national Constitution. The report spoke of resguardos, but it would be noted that the Constitution used the expression "indigenous territories", which were on the same level as the municipalities. As far as relations between the resguardos and the central Government were concerned, mention might be made of the agreement concluded very recently between the Government of the indigenous territory to the north of Cauca and the central Government on the elimination of poppy cultivation.

27. In connection with land distribution, it should be pointed out that, once land was allotted, it was the indigenous communities that took responsibility for its management, with complete autonomy. The ownership of land was subject to the land-ownership system of the indigenous population; the Government favoured the development of communal ownership, which was the traditional system among those communities and the system to which they were attached.

28. In that connection it was to be noted that foreign elements had arrived in northern Cauca, where they had encouraged the indigenous inhabitants to cultivate the poppy. The central Government, however, had made direct contact with the indigenous governor to assess the problem, and an agreement had been concluded by which the indigenous people, aware of the dangers of the situation they had ventured into, had undertaken to abandon poppy cultivation and return to traditional community work, while the central Government had established a committee consisting of representatives of the indigenous people and members of the central administration in order to initiate a programme of substitution for poppy cultivation, to create an infrastructure of services and to develop the production system. If the Committee so wished, the text of the agreement could be communicated to it.

29. Mention had also been made of the problem of timber exploitation. The National Institute of Renewable Natural Resources and the Environment (INDERENA) had taken measures to restrain large-scale multinational concerns and to halt deforestation, of which the indigenous populations were the primary victims. INDERENA had promulgated extremely strict regulations on timber felling, requiring that persons authorized to exploit the forest must at the same time carry out appropriate replanting; measures to protect fauna had also been taken. Much remained to be done, however, to protect the forest, indigenous land and the environment as a whole, and Colombia was endeavouring to fulfil its international commitments in that regard.

30. Mention had also been made of the registration of births and deaths of indigenous peoples. Under the provisions of the Constitution, each Colombian was entitled to legal personality, so that all births and deaths without exception must be registered with a district notary. Another question related

to the percentage of the electorate availing itself of the right to vote; in Colombia, voting was not compulsory, but rather a right which everyone could claim from the age of 18 years. The rate of abstention was established at each election. In any case, the Constitution guaranteed the right to vote to all, including of course indigenous people.

31. The Colombian programme of bilingual education had been launched in 1975. It had been greatly extended since then, with the cooperation of the French National Institute for Scientific Research, which had contributed to the training of ethnolinguists. That had made it possible to set up a team responsible for training specialized teachers to provide bilingual instruction to the indigenous peoples.

32. Various seminars had been held to that end in different parts of Colombia. Thanks to the action taken by the new indigenous administration, the different communities themselves would have the possibility of organizing instruction in their respective territories - and likewise health services - with the assistance of the competent ministries.

33. In connection with the declaration provided for in article 14 of the Convention, she said that the Colombian Government still had the matter under review and would communicate its conclusions to the Committee in its next report. Finally, she would ensure that replies were forthcoming to the other questions raised when she had been able to transmit them in writing to her country's authorities.

34. Mr. MESTRE SARMIENTO (Colombia), referring to the important decision taken by the Colombian Government to protect ecosystems and to respect the rights of the indigenous inhabitants in the Amazon area, said that the decision, which was referred to in paragraph 26 of the report, must aim at entrusting the development of the Amazon Basin to the communities that had always lived there. It seemed to him that that was the best way of preserving a resource vital to all mankind and of complying with his country's commitment to the international community to protect both the human resources - the ethnic groups living in the region - and the natural resources of the Amazonian forest, which covered a fifth of Colombian territory.

35. In the absence of the requisite statistics, he was unable to reply to certain of the questions raised, but would not fail to communicate them to his Government.

36. Mr. WOLFRUM said that he wished to take up some points which had just been made. First of all, with regard to preservation of the common heritage of mankind, it was evident that the commitment undertaken by Colombia to protect the Amazonian forest and the peoples who lived there was extremely positive and that many countries should follow that example. Secondly, on a number of occasions the issue had been raised of what should be understood by "racial discrimination". In particular, it had been said that the phenomenon was linked to the domination of the colonial Powers and that multi-ethnic societies were free from racial discrimination. Colombia was far from being the only multiracial society scrutinized by the Committee; in such countries as Canada, which also took pride in being a multi-ethnic society, there could be no denying that there was racial discrimination, in the very broad sense covered by the Convention. The commitment undertaken by States under

article 2, paragraph 1 (c), of that instrument was extremely broad and very few societies, seen in that perspective, could claim to be exempt from that scourge.

37. The Colombian delegation had also stated that its country was currently confronting the same difficulties as many other democracies. In that connection, he read out the conclusions adopted by consensus by the Human Rights Committee on 14 July 1992, which affirmed that the violence in Colombia (murders, torture, disappearances), although diminishing, continued to cause concern, as did the impunity enjoyed by the law enforcement authorities: in such circumstances it would be difficult to refer to "normal" problems of a democracy. In that regard he would have welcomed information on the incidents that had occurred in the Department of Cauca, where some 20 Indians had recently been killed by military or paramilitary groups.

38. It would also be recalled that the question of the implementation of article 4 of the Convention had already been brought to the attention of the Colombian Government during the consideration of previous reports.

39. Finally, the representative of Colombia had rejected his (Mr. Wolfrum's) use of the expression "period of transition" in regard to Colombia: that, however, was the term used recently by a representative of Colombia in the Human Rights Committee.

40. Mr. YUTZIS emphasized that a country such as Colombia did not experience the type of systematic racism to be encountered in the countries of the North; the contexts were different and the forms more subtle. In that country, as in other Latin American countries, what was to be seen was rather a stratification of society which might coincide with skin colour. The reasons for that should be studied. To obtain a clearer view, statistics were necessary, and the Committee should receive them in order to have a basis for its conclusions.

Mr. Mestre Sarmiento and Mrs. Galvis (Colombia) withdrew.

Ninth and tenth periodic reports of Chile (CERD/C/196/Add.1)

41. The CHAIRMAN announced that, for the consideration of the ninth and tenth periodic reports of Chile, the Chilean delegation would consist of Mr. Bengoa, Director of the Special Commission for Indigenous Peoples in Chile, and Mr. Oyarce, Counsellor to the Permanent Mission of Chile at Geneva.

At the invitation of the Chairman, Mr. Bengoa and Mr. Oyarce (Chile) took places at the Committee table.

42. Mr. BENGOA (Chile) drew attention to the historical outline in chapter I of his country's report (CERD/C/196/Add.1), which described the evolution of the Indian peoples, pointing out in particular that in paragraph 23 it was acknowledged that "throughout the republican history of Chile there has been discrimination against the Mapuches". It was further recognized that the Aymaras, who lived in the north of the country, and the Rapanui inhabitants of Easter Island had also suffered discrimination.

43. Chapter III of the report was presented in terms of specific articles of the Convention. In that part too it was acknowledged, contrary to certain claims in earlier reports, that discrimination had been very pronounced in Chilean history. It was, however, emphasized that no discrimination was countenanced by the Constitution and legislation. The indigenous peoples enjoyed the right to vote, the right to basic education, the right to own property, the right to conclude contracts and the other rights to which all Chilean citizens were entitled. Problems of discrimination were rather to be found at the level of cultural differences and in terms of the right of minorities to be recognized with their specific differences.

44. The action taken by the democratic Government to eliminate infringements of the rights of Chilean indigenous peoples was the subject-matter of chapter II of the report. Section 1 of that Chapter gave details of a proposal for reform of the Constitution, making specific provision in article 1 of the Constitution for the rights of the indigenous peoples. The amendment had been adopted by 90 votes to 1 in the Chamber of Deputies and was at the second stage of approval by Parliament. The Executive had also transmitted ILO Convention No. 169 to Parliament, and at the end of 1991 had submitted to it a new bill on the protection and development of the indigenous peoples which was based on an extensive discussion among the indigenous communities. The bill, whose main elements were set forth in paragraph 67, should be adopted during the current year. The text would mark an important change in the relations between the Chilean State and the indigenous peoples, the aim being to eliminate discrimination in Chile.

45. He also emphasized that, while in theory the indigenous inhabitants benefited from equal access to education, in practice they suffered from economic, cultural, geographical and other forms of discrimination in that field. To remedy that situation, a major programme of scholarships had been launched, starting in 1991. In 1992, 4,500 scholarships had been allocated for secondary, technical, vocational and university education. There were 750 indigenous scholarship-holders at university level, and that figure should increase perceptibly in 1993.

46. Numerous conflicts persisted between the indigenous inhabitants and landowners, who for the most part were the descendants of the colonists to whom the indigenous land had been allocated in the nineteenth century. The Government had established a special commission for the indigenous peoples, which had at its disposal, in particular, a legal service, for which 14 lawyers distributed among the principal indigenous zones were working. The service monitored, without charge, disputes in which indigenous people were involved and which the proposed new legislation would make it possible to resolve more satisfactorily. In that connection, he mentioned a case in which a 30,000-hectare estate in the south of the country, known as "Quinquen", where there were trees sacred to the indigenous people, had been allocated to the indigenous inhabitants after its purchase by the Government, thus ending a dispute which had gone on for several decades.

47. The development of the indigenous communities was another priority of the incumbent Government. A system had been established by which those communities themselves submitted projects. A fund of almost $3 million, which

would be increased, was used to meet the requests of the communities. Currently, 124 projects were at the implementation stage, and a further 200 were to be launched in the coming months.

48. The democratic Government in office had undertaken to eliminate all forms of discrimination. While it was true that certain forms existing in practice and in everyday life were difficult to overcome, and certainly could not be totally eliminated in the short term, it was a matter of the highest priority to continue to make progress in that direction.

49. Mrs. SADIQ ALI, country rapporteur for Chile, first of all welcomed the fact that, in submitting its ninth and tenth reports, Chile had shown its determination to continue its dialogue with the Committee. Unfortunately, the reports still did not comply with the Committee's guidelines. To some extent they supplemented the eighth report (CERD/C/148/Add.4), but they were difficult to assess.

50. The eighth report had been considered against the background of Chile's transition to democracy, after the departure of the Pinochet regime following the referendum of 4 October 1988. The Chilean Government was currently pursuing a programme of constitutional reform, but the latest two reports did not indicate what Constitution was currently in force. It should also be noted that the elected Government did not have a majority in the Senate, since the Pinochet administration had appointed the members of the Senate in such a way as to avoid the adoption of "unpleasant reforms". It was also known that General Pinochet would remain commander of the armed forces and a member of the National Security Council until 1997. The constitutional amendments were thus virtually doomed to failure, since they must be approved by three-quarters of the senators and deputies. Moreover, a wave of violence in the first quarter of 1991 seemed to have restored the initiative to General Pinochet.

51. The report under consideration (CERD/C/196/Add.1) still did not contain a definition of racial discrimination. None the less, it should be noted that, according to paragraph 68 of the document, "racial discrimination has been extremely acute" throughout the country's history. The report also condemned the Pinochet Government's policy of assimilation, which was aimed at forcing the indigenous inhabitants to abandon their culture and their language.

52. On the question of demography, discrepancies were to be noted in the figures given in paragraphs 58 and 65 of the document concerning ethnic groups. She wondered whether in Chilean censuses "ethnic groups" meant the same as "the indigenous population"; it would be desirable to find out the demographic composition of that population. It would also be useful to have information on the existence of a population of African origin in Chile. The historical outline given in the report on the subject of the Mapuches, the Aymaras and the Easter Islanders was very useful, and the same should have been done for all the indigenous groups. The Yamanas were not even mentioned in the report under consideration: had they disappeared? She recalled that the Chilean Government had already been asked to provide up-to-date information on the demographic composition of the population, and the indigenous population in particular (CERD/C/SR.846, para. 45).

53. A reform of indigenous policy was contemplated in Chile. Draft amendments to articles 1 and 19 of the Constitution were mentioned in paragraph 62 of the report. Paragraph 65 referred to a bill designed to ensure respect for the specific rights of 1 million Chileans belonging to the various ethnic groups. It would be useful for the Committee to receive details of the text. She asked whether amendments had already been made to the Constitution. She also asked how ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries was being implemented. Were the indigenous peoples represented in Parliament and in municipal bodies?

54. The Mapuche people continued to campaign for the repeal of Decree No. 2568 of 1979, which allotted land on an individual and unjust basis, as was stated in paragraph 10 of the report. Referring to paragraph 67 (b) of the report, she asked whether it implied that land reform was envisaged. In that connection, it should be pointed out that Chile's land policy was a matter of concern to the Special Rapporteur of the Commission on Human Rights. She also asked whether the 1979 law mentioned by Chile in its reply concerning the eighth report, a law to which the Mapuches were opposed, would be amended or repealed.

55. The expropriation of Mapuche land was unfortunately continuing. The land of 10,000 Mapuches from the communities of Arunco and Cantin were to be flooded by five hydroelectric dams. Furthermore, the newsletter of the International Work Group for Indigenous Affairs for January-March 1992 stated that a July 1990 decision of the Supreme Court calling for the eviction of the Mapuches from their ancestral land was about to be enforced and that 400 policemen from three provinces had been mobilized to eject 150 indigenous people. The Supreme Court's decision gave the impression that citizens' rights applied according to the racial origin of the person in question.

56. The Aymaras, who lived in the Andean region, had also been deprived of joint titles of ownership, a situation which had led to serious conflicts. It would be useful to learn whether some of those conflicts had been resolved, and through what procedures. According to paragraph 67 (u) of the report, in the case of the Huilliches, their traditional cacique system was to be restored; would that apply to the Aymara people? Decree No. 1122 of 1981 had deprived the Aymara communities of their rights to water supply, which were vital for their agriculture, in order to supply the large mining companies instead. It would be interesting to know how the recently established National Indigenous Development Corporation could resolve that situation. She hoped that information would be provided on that issue in the next report.

57. The number of Easter Islanders was given as 785 persons in paragraph 45 of the report, and as 3,090 in paragraph 58. Which figure was correct? The land ownership rights of that community were still restricted by Decree-Law No. 2885 of 1979, which accorded ownership titles to Chileans. She would like to know how the situation was developing.

58. Turning to the specific articles of the Convention, she requested, in connection with article 2, paragraph 1 (c), that Chile should provide information in its next report on what had been done to amend or rescind any laws and regulations which had the effect of perpetuating racial discrimination. With regard to paragraph 1 (e) of that article, she asked whether there were any integrationist and multiracial movements in Chile. It

was a matter for regret that the report contained no information on article 3. In connection with article 4, she recalled that, according to the eighth periodic report of Chile, a bill had been submitted to Parliament on the implementation of that article. The bill had been under consideration for 16 years. Moreover, the Penal Code and the Code of Penal Procedure contained provisions on legal violations of the rights of the indigenous population, whose status remained ill-defined. It would be useful to know whether those provisions had been amended.

59. With regard to article 5 of the Convention, she noted, in connection with the eviction order against the Mapuches adopted by the Supreme Court in July 1990, that the Supreme Court was still composed of judges appointed under the military dictatorship, and that it continued to curb investigations into past human rights violations, according to an Amnesty International report of 1991, which had also pointed out that the Government was proposing reforms aimed at guaranteeing a fair trial and restricting the jurisdiction of military courts to military offences. Information on those issues would be appreciated.

60. In connection with the economic, social and cultural rights provided for under article 5 (e) of the Convention, it would be interesting to have statistics on education, employment, housing and medical care among the various indigenous groups and in the shanty towns. Some 200,000 Mapuches were crammed into the shanty towns of Santiago, occupying the lowest rung on the social ladder. Overall unemployment had reached 21 per cent under the Pinochet regime: what was the current figure?

61. The information requested by Mr. Ferrero Costa on the implementation of article 6 had still not been provided. It would also be useful to have further details about the National Commission for Truth and Reconciliation, established by President Aylwin. The Commission was said to have found that the judiciary had failed in two crucial respects. First of all, it had rejected hundreds of habeas corpus petitions, response to which would have prevented many cases of disappearances. Furthermore, civil judges were alleged to have abandoned their duty to review the procedures of military courts. Various forms of reparation had been contemplated, but it should not be forgotten that the Supreme Court had upheld the amnesty law adopted under the military dictatorship in 1978, and had dismissed many requests for an inquiry into human rights violations. In fact, both the Government and the opposition parties now recognized the need for a radical overhaul of the judicial system.

62. In connection with article 7 of the Convention, information was needed on what was being done in the field of education and training to promote awareness of the problems of discrimination among teachers, the police, magistrates and the military. Was the public being informed of the provisions of the Convention and their application? Finally, in connection with article 14, she asked whether the Chilean Government was considering making the declaration provided for under that article.

63. In conclusion, while noting that the new civilian Government was trying to carry out constitutional reforms, she regretted the absence of legislative and other measures to ensure implementation of articles 1, 4, 5 and 6 of the

Convention. She asked the Chilean Government to take the necessary steps to resolve the unsatisfactory situations to which she had referred, and expressed the hope that significant progress would be achieved in that direction by the time the next report was submitted.

64. The CHAIRMAN, responding to a request from Mr. Aboul-Nasr, and with the agreement of the Chilean delegation, suspended consideration of the report of Chile in accordance with rule 42 of the Committee's rules of procedure.

Mr. Bengoa and Mr. Oyarce (Chile) withdrew.

DRAFT LETTER TO THE CHAIRMAN OF THE COMMISSION ON HUMAN RIGHTS CONCERNING THE SITUATION IN THE FORMER YUGOSLAVIA

At the request of Mr. Ahmadu, the representatives of the press and information services withdrew.

65. Mr. ABOUL-NASR said that he had taken the liberty of interrupting the discussion because of the grave deterioration in the situation in Bosnia and Herzegovina and the request for the convening of the Commission on Human Rights. The Committee was concerned by the issue, and should make its views known. Some of its members had consulted each other and had concluded that the Committee should address a letter to the Chairman of the Commission on Human Rights, through the Secretary-General. They had accordingly prepared a draft letter in English, which read:

> "Sir,
>
> The Committee on the Elimination of Racial Discrimination has followed with grave concern the developments taking place in former Yugoslavia. It welcomes the convening of the Exceptional Session of the United Nations Commission on Human Rights to examine the situation arising from the massive human rights violations taking place, particularly in Bosnia Herzegovina, as a result of the policy of 'ethnic cleansing' being carried out by Serb militias. This aspect of the tragic situation is of particular concern to the Committee. The Committee would like to join in expressing alarm at the situation and trusts that the Commission on Human Rights will take expeditious and effective measures at its forthcoming Exceptional Session to put an end to the violations of human rights and human suffering and provide protection for the innocent civilian population. The Committee expresses its readiness to cooperate in this endeavour within the framework of the mandate entrusted to it by the Convention on the Elimination of All Forms of Racial Discrimination."

He said that the text represented a compromise, and expressed the hope that, in view of the urgency of the situation, the Committee could adopt it by consensus.

66. Mr. van BOVEN said that he welcomed the initiative, but suggested that a few minor changes could be made to the text. Firstly, it would be preferable, from a procedural point of view, to address the letter solely to the Chairman of the Commission on Human Rights, rather than to the States members of that body. Secondly, in so far as it was still not known whether the special session of the Commission would take place, in the second sentence of the

text, the words "It welcomes" should be replaced by "It would welcome". Thirdly, also in the second sentence, it would be more prudent to delete the words following "ethnic cleansing". Fourthly, he proposed that "will take" should be replaced by "may take" in the fourth sentence of the text. Finally, the adjective "innocent", which preceded the words "civilian population" in the same sentence, seemed to him to be superfluous.

67. Mr. DIACONU fully agreed with the proposed amendments, which he thought worthwhile and necessary, particularly the third one. For his part, he suggested that, in the penultimate sentence of the text, the words "to put an end to the violations" should be replaced by "with a view to putting an end to the violations", which would correspond more closely to the competence of the Commission on Human Rights.

68. Mr. AHMADU said he entirely agreed that the Committee should express its concern at the situation, and was prepared to accept all the amendments proposed by Mr. van Boven. However, he considered, that it would be more effective to address the letter to the Secretary-General of the United Nations, since the Security Council was the only body with the authority to order a cessation of hostilities.

69. Mr. RECHETOV proposed that, in order not to prejudge the decisions which the Commission on Human Rights might take at its special session, if it were to be held, the following sentence should be inserted in the text, after the second sentence: "The Committee notes the deep concern of the Security Council expressed at the continuing reports of widespread violations of international humanitarian law and, in particular, reports of the imprisonment and abuse of civilians in camps, prisons and detention centres within the territory of the former Yugoslavia and especially in Bosnia Herzegovina."

70. Mr. SHAHI said he was prepared to accept the proposal of Mr. Rechetov and that of Mr. Diaconu. On the other hand, he opposed the deletion of the reference to the Serb militias in the second sentence of the proposed text, since the responsibility of the Serbs for the situation prevailing in Bosnia and Herzegovina was beyond doubt. The Committee was a body of independent experts which had a duty to condemn acts violating human rights and acts of discrimination. The main point was to bring about a cessation of hostilities, and in view of the inaction of the Security Council and the international community he recommended that the Committee should address the proposed letter directly to the Secretary-General of the United Nations, stating very clearly that the situation called for appropriate measures by the Security Council to end the conflict.

71. Mr. GARVALOV said he did not believe that the convening of a special session of the Commission on Human Rights would serve to relieve the Security Council of responsibility for the issue. He agreed to the text proposed by Mr. Rechetov and suggested that it should state that the Committee expected the Commission to take measures to help the United Nations (or the international community) to put an end to the situation.

72. Mr. de GOUTTES thought that the Committee could not remain silent in the face of the grave human rights violations taking place in Bosnia and Herzegovina. The proposed special session of the Commission provided it with an opportunity to make a gesture in that direction.

73. However, the question raised far too serious substantive issues for the Committee to dwell unduly on matters of form. Regretting that the draft letter had been prepared only in English, he none the less found the proposed text acceptable, as also the supplementary proposal by Mr. Rechetov. Finally, he would favour publication of the letter, in order to make it fully apparent that the Committee was concerned about the problem.

74. Mr. WOLFRUM said he did not think that it was necessary to address the letter to the Secretary-General. He also hoped that the reference to the Serb militias would be retained. Finally, he was in favour of publishing the letter once it had been adopted.

75. Mr. FERRERO COSTA expressed the hope that the Committee would act pragmatically and that it would adopt, without delay and by consensus, a text which in his opinion should be addressed to the Chairman of the Commission on Human Rights and should be published. With regard to Mr. Rechetov's proposal, he would go along with the view of the majority.

76. Mr. SHAHI read out the text of the draft letter, incorporating the amendments proposed by Mr. van Boven (without deleting the reference to the Serb militias), the amendment proposed by Mr. Diaconu, Mr. Rechetov's text, and also some minor changes that he himself was suggesting by which, in the third sentence, "This aspect" would be replaced by "These aspects" and, in the fourth sentence "the Commission on Human Rights will take" would be replaced by "the Commission on Human Rights would take". He invited all members of the Committee to approve that wording.

77. Mr. DIACONU, arguing that, according to some sources of information, the Serb militias did not appear to be the only party involved, suggested that the text should be modified slightly so that "'ethnic cleansing'" in the second sentence would be followed by "which, according to some sources, is being carried out by Serb militias".

78. Mr. SHAHI stressed that the Committee was composed of independent experts who had a duty to put the cause of human rights above any political consideration. How could there be 2.2 million refugees in the region if there was no "ethnic cleansing"? Even though the Croats might also have committed reprehensible acts, it was well known who was responsible for the situation.

79. Mr. SONG Shuhua shared Mr. Diaconu's view, and said he would be prepared to accept the proposed wording if it were the subject of consensus.

80. Mr. van BOVEN agreed that responsibility for the situation should not be laid entirely at the door of the Serbs. He therefore thought it more prudent to delete the reference to the Serb militias, but would not insist on the point.

81. Mr. ABOUL-NASR said that although he wholeheartedly agreed with Mr. Shahi's point of view, he would agree to delete the contentious reference in the interests of reaching a consensus.

82. Mr. SHAHI and Mr. AHMADU said that they would abstain on the issue.

A vote was taken by show of hands on the proposal to retain the reference to Serb militias in the second sentence.

The proposal was accepted by 11 votes to 1, with 4 abstentions.

The draft letter as a whole, as amended, was adopted by consensus.

The meeting rose at 6.35 p.m.

CERD/C/SR.946
11 August 1992

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-first session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 946th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 7 August 1992, at 10 a.m.

Chairman: Mr. VALENCIA RODRIGUEZ

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* The summary records of the second part (closed) and the third part (public) of the meeting appear as documents CERD/C/SR.946/Add.1 and CERD/C/SR.946/Add.2 respectively.

The meeting was called to order at 10.10 a.m.

LETTER TO THE CHAIRMAN OF THE COMMISSION ON HUMAN RIGHTS CONCERNING THE SITUATION IN THE FORMER YUGOSLAVIA

The CHAIRMAN welcomed the Under-Secretary-General for Human Rights and informed him that, on the previous day, the Committee had adopted by consensus a letter addressed to the Chairman of the Commission on Human Rights concerning developments in the former Yugoslavia. He read out the text of the letter and of the covering letter to the Secretary-General, and transmitted them to the Under-Secretary-General for appropriate action.

The meeting rose at 10.25 a.m.

CERD/C/SR.946/Add.2
11 August 1992

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-first session

SUMMARY RECORD OF THE THIRD PART (PUBLIC)* OF THE 946th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 7 August 1992, at 11 a.m.

Chairman: Mr. VALENCIA RODRIGUEZ

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* The summary records of the first part (public) and the second part (closed) of the meeting appear as documents CERD/C/SR.946 and CERD/C/SR.946/Add.1 respectively.

The meeting was called to order at 11.10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7) (continued)*

Ninth and tenth periodic reports of Yemen (CERD/C/209/Add.2)

At the invitation of the Chairman, Mr. Mokbil (Yemen) took a place at the Committee table.

1. Mr. MOKBIL (Yemen), introducing his country's reports, submitted in a single document, said they clearly indicated that social or racial discrimination played no part in the life of the Yemeni people, which had a single ethnic origin and had for 14 centuries clung to the tolerant teachings of Islam in respect of relations between races. That tradition had survived fragmentation and colonialism, and had gained new impetus in the decades since independence. Prior to unification, the two Yemeni States had signed and ratified numerous international human rights instruments, including the Convention which was the subject of the Committee's mandate.

2. The unified Republic of Yemen had assumed the international obligations previously entered into by the two predecessor States. It was a country in which access to justice and to public services such as health and education was guaranteed to all, and which actively promoted friendly relations with other peoples and non-discrimination. Freedom of the press was assured, and democratically established political parties would be participating in a general election to be held in November 1992.

3. Mrs. SADIQ ALI, country rapporteur, said that the end of the artificial division of Yemen was a welcome development, although the process of unification, particularly in such fields as education and labour, might take some time. The new Parliament to be elected in November 1992 would be empowered to draft a new Constitution, and it was to be hoped that information on the sections giving effect to the provisions of the Convention would be supplied to the Committee in the next report. The Committee would also wish to know whether the Convention would prevail over domestic law, whether it could be invoked before the courts and administrative authorities, and whether its provisions could be enforced by those bodies. Was the judiciary autonomous, and did judges have security of tenure?

4. The Committee would also expect to receive information on the demographic composition of Yemen. Attention might be drawn to the fact that, while almost all of the once substantial Jewish population had emigrated, between 1,000 and 1,500 Jews remained, mostly scattered in the northern rural areas. In addition, there were foreign Christians and a Christian community of Indian origin in Aden, as well as Hindus. Yemenis of African origin lived along the

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* Resumed from the 945th meeting.

Red Sea coast, and there were several other minority groups. The Committee would welcome information on the tribal and nomadic affiliations which had existed before independence and which might still persist.

5. The interim Constitution prohibited any discrimination based on sex, colour, origin, language, occupation, social status or religious belief, and there was no indication that agitation against minorities was inspired or condoned by the Government. Yemen was a secular democracy, and if discrimination occurred, it was largely a result of age-old prejudices at the community level. For example, the small Jewish community did suffer from discrimination and was fearful of persecution by extremist Muslim groups. She would like to know how the Government intended to fulfil its responsibility to protect the civil rights of that community.

6. Similarly, Yemeni citizens with a non-Yemeni parent faced both institutionalized and informal discrimination, as did the descendants of former slaves. In that connection, the Committee would like to receive information on laws or regulations amending or rescinding discriminatory legislation.

7. The Committee would also wish to know what special programmes had been undertaken to improve the socio-economic situation of persons belonging to tribes and whether it was intended to eliminate habits and customs, such as blood feuds and collective punishment, which had kept them backward.

8. Prohibition of discrimination carried out by private individuals or groups and encouragement of integrationist multiracial organizations and movements were means of eliminating barriers between races, as was affirmed in article 2 (d) and (e), and she inquired whether any action was envisaged to implement that provision of the Convention.

9. It was to be hoped that the next report would furnish information on all aspects of article 2, which covered measures taken in the legislative, judicial and administrative areas. The obligations arising under article 3 seemed to have been duly complied with.

10. With regard to article 4, it was stated that up to the time of the preparation of the report, no offences punishable under that article had been committed, nor were they likely to be committed in the Republic of Yemen, which prohibited all manifestations of racial discrimination. However, the examples she had quoted showed that there were indeed cases of such discrimination in Yemen and hence it was essential that article 4 should be implemented. In fact, compliance with the article was compulsory for States parties.

11. Where the implementation of article 5 was concerned, the report stated that the law in Yemen guaranteed equal treatment before the tribunals and all other organizations administering justice. Information was, however, needed on whether the lower courts had been merged, whether the former court systems continued to function in the respective halves of the country, and what was the position of divisional and provincial courts.

12. Yemen was to be congratulated on the introduction of multi-party democracy and the wide range of civil rights guaranteed to all, without

distinction as to race, colour, descent or national or ethnic origin. The report stated that more than 1 million Yemen migrants had recently returned to the country. She inquired whether there was a possibility of their leaving the country once again and what their situation had been on returning to Yemen. Yemen should be commended for accepting some 10,000 refugees from civil wars in Somalia and Ethiopia. She inquired whether article 3 of the 1951 Convention relating to the Status of Refugees, which required the Contracting States to apply the instrument without discrimination as to race, religion or country of origin was being applied to the refugees, and whether identity papers had been issued to all refugees.

13. With regard to article 6, it had been stated that no case or complaint involving racial discrimination had been brought before tribunals by any individual or group of persons. However, examination of the situation prevailing in Yemen showed that there were indeed examples of informal and institutionalized discrimination and it was possible that the existence of such a remedy was not widely known.

14. Article 7 of the Convention stressed the need to improve the quality of teaching, education, culture and information to combat prejudices which led to racial discrimination. She asked what legislative and administrative measures had been taken in that sphere. She would like to know whether teacher-training programmes and programmes for other professionals, magistrates and the police included subjects that would help promote a knowledge of human rights issues and engender better understanding, tolerance and friendship among nations and racial or ethnic groups. Were children taught about the purposes and principles of the Charter of the United Nations, and other international instruments? Information would also be useful on the roles of institutions or associations working to combat racial prejudice and to promote understanding and harmony among nations and racial or ethnic groups. It should also be indicated whether Yemen was willing to make a declaration under article 14.

15. Mr. WOLFRUM recognized that Yemen had the most liberal economic and political system in the region. It was to be commended for its wealth of political parties and for its willingness to help refugees despite its economic problems. He was, however, concerned that the penal code did not reflect the provisions of article 4 of the Convention. The article was not intended to be implemented only when discrimination actually manifested itself; it was also intended to help prevent such a development.

16. Mr. ABOUL-NASR said that it was impossible to take a case of discrimination to court unless the act concerned was covered by a provision of the penal code. With regard to education, he did not believe that Yemen was violating human rights by giving priority to citizens in regard to admission to the free school system and university. Many other countries had the same regulations. He requested information on problems and disputes between tribes and measures taken to resolve them. With regard to the Jewish population, he considered that they were Yemenis, but of the Jewish faith.

17. Mr. de GOUTTES said that the report of Yemen had been drafted in accordance with the Committee's guidelines. However, with regard to the statement in paragraphs 17 and 30 that no offences punishable under the provisions of article 4 had been committed, the Committee should express its

reservations on and refusal to accept statements of that kind. The section in the report dealing with article 5 provided general information on legislation covering public freedoms, but it did not deal with racial discrimination, and the information provided would have been of more interest to the Human Rights Committee.

18. Mr. SHAHI asked whether the 100,000 persons of Indian origin resided permanently in Yemen, whether they were considered as citizens or aliens, and if the former, whether they enjoyed the same rights as Yemeni citizens.

19. Mr. MOKBIL (Republic of Yemen) said that, due to the changes which had taken place in Yemen, the facts given in the report did not always reflect the most recent developments, and the Committee's interpretation of the situation might sometimes be based on a misunderstanding. Unification had meant that economic, social, cultural and judicial arrangements had had to be reviewed and the most positive aspects of both systems had been combined. The interim Constitution was a great achievement and had ensured a period of stability and progress. It had also ensured that the Convention and its principles were reflected in legislation. For example, political parties had been set up without any discrimination on ethnic or racial grounds. The same laws applied to all.

20. Members of the various tribes in the country were now considered as Yemenis, and no distinction was made between them. For example, efforts had been made to bring education and health services to the Bedouin, with the result that many had now settled down and no longer led a nomadic existence. The only difference between tribal groups lay in their occupations, so that, for example, coastal peoples lived by fishing, and groups in the interior by farming. In reply to the question on the treatment of minorities, he said that there were no minorities in Yemen, since all were considered as Yemeni citizens. Regarding appointments to posts in the civil service, members of the Presidential Council, the supreme governing body of the State, were required to be of Yemeni parentage, but at all other levels - including ministerial level - no such restriction operated, and the same was true of appointments to posts in universities and in the armed forces.

21. The independence of the judiciary in Yemen was guaranteed under article 22 of the interim Constitution. Inhumane treatment of prisoners was prohibited, and no one could be held in detention without charge for more than 24 hours. Since the Constitution was to a large extent based on the precepts of the shariah, capital punishment was permitted: he was not able to say how often it had been resorted to in recent years.

22. On the question of treatment of refugees, he pointed out that over 1 million Yemeni citizens had recently returned to their country from the Gulf area, and all had been absorbed and provided with housing, health care and education. In addition, Yemen had taken in 50,000 Somali refugees as well as refugees from Eritrea and Ethiopia. The treatment accorded them was in conformity with the provisions of the 1951 Convention relating to the Status of Refugees.

23. On employment, the right to work was guaranteed under the Constitution, and recent legislation made provision for social security benefits and medical insurance schemes. Citizens enjoyed the right to form trade unions, as well as the right to strike.

24. Where article 4 of the Convention was concerned, the report devoted relatively little space to measures taken to eradicate incitement to, or acts of, discrimination. However, he wished to stress that no such incitement or acts had been known to occur throughout the history of Yemen, and that as a result there had been no need to bring complaints of racism or racial discrimination before the courts. Nor had there been need to ban organizations which promoted racial discrimination, as required under paragraph (b) of the article, since no such organizations had ever existed. Racial discrimination was strongly condemned not only in the country's schools and education institutions but also in the press and mass media.

25. Schooling in the country was compulsory, and free of charge up to secondary level, although there were also private schools for those who wished their children to be educated in a foreign language. A determined campaign was being waged to wipe out illiteracy. Great emphasis was placed on teaching children to respect and value the culture of other countries and peoples, and the Universal Declaration of Human Rights formed part of the school curriculum. Human Rights Day was regularly celebrated, and was used to instil awareness of the abhorrent nature of racial discrimination.

26. On the question whether citizens of Yemen were allowed to submit communications to the Committee under article 14 of the Convention, he said that there was no ban on submitting such communications, but since no racial discrimination existed in the country, there was no need for them. In reply to a further question, Yemen had 35 political parties and 110 newspapers. He would convey to his country's authorities the comments of members of the Committee on Yemen's penal code.

27. The newly formed Republic of Yemen was successfully tackling the problem of tribal conflicts. Under the British administration, South Yemen had been divided into 15 separate sheikhdoms and, as a result, tribal conflicts had been common. That situation had persisted for some 30 years, but now matters were greatly improved. Although there were still some nomadic tribes in the rural areas, most were now settled, had received an education and were contributing to the social and economic life of the country. Isolated cases of tribal vendettas still occasionally occurred, but they were rare.

28. A question had been asked concerning treatment of Yemeni Jews. Many of them had left the country, but those who remained suffered from no discrimination of any kind. The same was true of the 100,000 persons of alien origin in the country.

29. Finally, in reply to the question as to whether the Islamic shariah provided sufficient guarantees of the rights listed under article 5 of the Convention, he pointed out that the country's Constitution and legislation were not based solely on the precepts of the shariah but also on other principles. That ensured that all the rights provided for under the Convention were given sufficient protection.

30. Mr. YUTZIS said that article 4 of the Convention was of great importance, in that it listed a number of very specific measures to be adopted by States parties with a view to preventing racial discrimination. He pointed out that unless a State party had entered a reservation to that article at the time of acceding to the Convention, it was under an obligation to adopt all the measures listed.

31. He noted that in paragraph 34 of the report, as well as in other paragraphs, stress was laid on measures taken to inspire young people with a spirit of friendship towards peoples and opposition to all forms of sectarianism. In paragraph 41, paragraph 2, however, it was stated that secondary education was designed to train the younger generation to "venerate the values and ideals of the Islamic and Arab nations". Was it not important that young people should also be taught to venerate the values of other cultures and religious faiths?

32. Mrs. SADIQ ALI, country rapporteur, thanked the representative of Yemen for the very full replies he had given to questions raised. She wished only to request that, if Yemen's Constitution was to be amended by the new Assembly, the Committee should be provided with the text of any of its provisions that were relevant to the Convention. She was interested to hear that the representative of Yemen would be referring articles 4 and 14 of the Convention to his country's authorities.

33. Mr. ABOUL-NASR said he would like to inform Mr. Yutzis that the values of Islam included, by definition, recognition and respect for the values of other religions, to the extent that believers in other religious faiths were specifically included in Islamic prayers.

Mr. Mokbil (Yemen) withdrew.

The meeting rose at 1.10 p.m.

CERD/C/SR.947
9 September 1992

ENGLISH
Original: FRENCH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-first session

SUMMARY RECORD OF THE 947th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 7 August 1992, at 3 p.m.

Chairman: Mr. VALENCIA RODRIGUEZ

later: Mrs. SADIQ ALI
later: Mr. AHMADU

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7) (continued)

Ninth and tenth periodic reports of Austria (CERD/C/209/Add.3, HRI/CORE/1/Add.8)

At the invitation of the Chairman, Mr. Berchtold (Austria) took a place at the Committee table.

1. Mr. BERCHTOLD (Austria) said his country's report on implementation of the Convention was fairly short, because Austria had devoted most of its attention to preparing the core document (HRI/CORE/1/Add.8) and a report on the question of ethnic groups. Concerning the core document, he drew attention to an error in the second line of paragraph 3, where "square metre" should in fact read "square kilometre". He hoped that members of the Committee had received the annexes referred to in the document. Lastly, he pointed out that the Law of 27 October 1862 for the protection of personal liberty, referred to in paragraph 45, had been replaced by a new law, which had entered into force on 1 January 1991.

2. Mr. BANTON, country rapporteur for Austria, said that the notes which had been circulated to members of the Committee with his comments and questions included a list of questions which had been asked in the course of consideration of previous reports, which Austria did not appear to have answered in full.

3. He asked what measures the Austrian Government was taking to ensure coordination of its policy for implementation of the Convention. In regard to effective remedies (art. 6 of the Convention), and in particular to methods of evaluating the effectiveness of available remedies in cases of racial discrimination, he quoted an example of United Kingdom legislation on robbery and burglary to show that the effectiveness of remedies should be evaluated from the viewpoint of the individuals to be protected. He would appreciate the views of the representative of Austria on that point.

4. He referred to the disquieting results of the opinion survey conducted by the Austrian Gallup Institute in 1991 on anti-Semitism in Austria, according to which 20 per cent of those polled explicitly agreed that the access of Jews to specific (influential) positions should be controlled or subject to numerical quotas, while an additional 27 per cent had "no response" to this question of basic civil equality. Fifteen per cent agreed that the acquisition of capital and land by Jews should be legally limited. He asked whether that country recognized anti-Semitism as a danger, and whether there were any plans to adopt measures, notably in the field of education, to combat prejudices which might lead to acts of discrimination. In regard to xenophobia, the considerable pressure currently exerted on Austria by the flood of asylum seekers and refugees should be taken into account.

5. Concerning the core document (HRI/CORE/1/Add.8), he referred to article 1 of Austria's Federal Constitutional Law of 1973, which prohibited any discrimination on the sole ground of race, colour, descent or national or ethnic origin. He would like to know whether the same restrictions applied in

Austria to other prohibitions in regard to racial discrimination. Had there been any cases in which Austrian courts had distinguished between unlawful and lawful grounds for discrimination? The distinction between racial grounds proper and sexual, commercial or even political grounds was often difficult to establish. It was of interest to note certain recent amendments to Australian legislation in that connection: previously, to be deemed unlawful, an act of discrimination had to be shown to have a dominantly racial motive, whereas today only one of the motives needed to be racial for the action to be deemed unlawful. If the Austrian Government, for its part, was restricting the use of remedies in regard to racial discrimination to acts which could be shown to have been motivated solely by racial hostility, it was considerably weakening the scope of the Convention.

6. Mr. DIACONU said the experience of a country such as Austria, which was now in many respects the hub of Europe, was of considerable interest. However, it was regrettable that the report under consideration was so short, and difficult to read in so far as it referred back to various earlier reports.

7. A number of points called for clarification. First, in the light of the proliferation in Austria - as in other European countries - of associations advocating xenophobic if not racist attitudes, it would be interesting to know whether any measures directly penalizing such associations were being contemplated. The legal measures listed in the eighth periodic report (1987) did not appear to be adequate in that respect; however, perhaps the situation had changed? What measures had been taken to prevent unduly discriminatory treatment of immigrants? Had there been any demands on the part of minorities for the setting up of universities, or university departments, where instruction would be provided in their mother tongue? Lastly, what remedies were available to Austrian citizens in cases of racial discrimination? The core document seemed to imply that administrative decisions could only be challenged before two courts situated in Vienna. Was that in fact the case?

8. Mr. WOLFRUM, after expressing his thanks to the Austrian Government for having taken in so many refugees from the former Yugoslavia, pointed out, with reference to paragraph 55 of the core document, that in the light of the importance of the question of the treatment of certain minority groups, a mere reference back to other texts was somewhat inadequate.

9. In that connection, he would like to have further details on two questions which had not been dealt with in previous reports. First, he would be grateful if the representative of Austria could provide clarifications on a judgement of the Constitutional Court, dated 15 December 1989, which had declared unconstitutional article 2, paragraph 10, of the Act relating to the education of minorities in Carinthia and declaring other provisions of that Act null and void, while affirming that article 7, paragraph 2, of the 1955 Treaty of Vienna had priority in that respect. Secondly, he would like details on the implementation of another decision by the Constitutional Court, dated 1987, under which Croat had been accepted as a second language in the municipalities and districts of Burgenland and Carinthia where Croats lived.

10. He would also like further information concerning political representation of the Slovenes and Croats in the two regions to which he had

referred, and whether they were able to form political parties. Was the Hungarian language accepted in Burgenland? Was the Croat used in the region the one spoken by Croats who lived there, or the Croat spoken in Croatia?

11. Mr. de GOUTTES thanked the representative of Austria for having made a special trip from Vienna to attend the Committee's meeting. He too considered that the report was of special interest in view of the role played by Austria in the defence of human rights. Since it had already recognized the system of individual petitions, the country should have no difficulties in making the declaration provided for under article 14 of the Convention.

12. With regard to the report itself, he would like to know, first, whether the fact that it had so far proved unnecessary in Austria to take measures under article 2, paragraphs 1 (d) and (e) (para. 5 of the report), meant that there had been no racial discrimination within the meaning of those paragraphs; and, secondly, whether the Convention was directly applicable in Austrian domestic law and could be directly invoked before the courts. He hoped that Austria's next report would supply full information on the situation of refugees, notably those coming from central and eastern Europe, and on the existence of groups with racist or xenophobic views, as well as statistics on complaints lodged, proceedings instituted and sentences handed down for acts of racism.

13. Mr. van BOVEN regretted that the report submitted did not contain more information. The battle against racial discrimination was not something static: it was a combination of trends, developments and policies on which it would have been desirable to have further details. More information and more examples would also have been useful in regard to xenophobic tendencies and outbreaks of anti-Semitism in Austria. It was surprising that the elimination of racial discrimination should be viewed as a purely legal matter, in view of the fact that the Convention made clear that legislation was only one of the measures that could be adopted for that purpose. Lastly, it would be a commendable initiative for Austria to make the declaration provided for under article 14 of the Convention.

Mrs. Sadiq Ali took the Chair.

14. Mr. BERCHTOLD (Austria), replying first to comments concerning the Austrian report (CERD/C/209/Add.3), which he himself had prepared, pointed out that the drafting had caused him some problems. In fact, he had been responsible for drafting Austria's reports to the Committee for many years, and he had wondered whether he should repeat information that he had already communicated previously. Accordingly, he would appreciate it if members of the Committee could indicate in their concluding observations whether they wanted a comprehensive report, or simply an updating of earlier reports.

15. On the question of minorities, he pointed out that different ethnic groups existed in Austria, all of them in very different situations. Czechs who lived in Vienna had their own school, where children could learn Czech, as well as their own cultural association, but they were very well integrated into the rest of the population. The Croat minority that lived in Burgenland was divided into two groups, one made up of those who believed that they should preserve their cultural identity, and the other of those who considered that they should integrate into the rest of the population and thus benefit

from a higher standard of living. Accordingly, it had not been possible to set up an advisory council. Hungarians were also to be found in Burgenland. They formed a very small community, which had proved highly cooperative. They had sent representatives to the advisory council, and received subsidies and other forms of assistance. It was the Slovene minority living in Carinthia that caused the most difficulties.

16. Generally speaking, problems concerning minorities dated back to the aftermath of the First World War, when a new State (Bundesland) incorporating Serbs, Croats and Slovenes had been created. The Slovenes had invaded and occupied southern Carinthia, on the grounds that there was a Slovene majority in the region. A referendum had been held in October 1920 and the population had opted, by a slender majority, to remain part of Austria. After the Second World War, the territory had again been occupied by the Slovenes, but in the end had remained part of Austria. It was understandable, therefore, that relations between the Slovenes and German-speaking Austrians were not always very amicable, and that the latter did not always look favourably on measures taken to benefit the Slovene minority. The Austrian Government had nevertheless fulfilled its responsibilities, and the Slovenes had their own schools, where children received bilingual instruction. The Constitutional Court had taken decisions in their favour, obliging the legislature to amend laws as a result. It should be noted that the Church played an important role in that regard, since many of the members of the clergy were Slovenes. In addition, minorities of whatever kind were free to form their own political parties, although those parties were too small and did not receive enough votes to be represented in the national parliament. There had recently been some idea of reserving a few seats in parliament for minorities, independently of the election results, but since the idea had not received unanimous support, nothing had yet been decided.

17. He shared Mr. van Boven's view that legislation was not sufficient to combat racial discrimination, and that other measures were needed. In Austria, children learned tolerance at school, and young people, as part of their higher education, could obtain scholarships to travel abroad, meet other students, and become acquainted with other cultures. Numerous measures were thus taken to encourage better knowledge of others and to promote tolerance.

18. Concerning the problem of xenophobia, he pointed out that what Austrians most feared was that foreigners arriving in Austria might take away their jobs. As for refugees, Austrians were willing to welcome and assist them, and had no xenophobic feelings towards them.

19. Concerning anti-Semitism, the danger came solely from organized anti-Semitic groups or movements, not from individuals, whose attitudes in regard to Jews were a matter entirely for themselves.

20. Regarding the incorporation of the Convention into domestic law, he said that a federal constitutional law prohibited any discrimination on grounds of race, colour, descent, or national or ethnic origin, and in that connection drew the attention of members of the Committee to paragraph 57 of the core document (HRI/CORE/1/Add.8). On the matter of the wording of paragraph 5 of the report under consideration (CERD/C/209/Add.3), he explained that the problem lay in an unfortunate choice of words; in fact, he had intended to say

that he had already given information in earlier reports on measures taken to give effect to article 2, paragraphs 1 (d) and (e), of the Convention, and did not want to repeat them.

21. In regard to racist organizations, he stated that the re-establishment of the Nazi Party was prohibited, and that any activity aiming to revive it would constitute an offence punishable by law. In addition, any organization based on Nazi ideas could not exist in law.

22. Concerning remedies, and more specifically the comment by Mr. Diaconu to the effect that the two existing administrative courts were inadequate, he pointed out that the function of those courts was to monitor the legality of actions of the administration, and up to now they had never had to deal with complaints regarding acts of discrimination committed by the administration. Recently, however, the first case in which the constitutional law on elimination of racial discrimination might be applicable had come before the Constitutional Court, although there was so far nothing to indicate with any certainty that a case of racial discrimination was involved.

23. In regard to the list of questions submitted by Mr. Banton, he said that according to a census carried out in 1981, the population of Austria at that time had been 7,263,890. In July 1992, that had been 286,607 immigrant workers, of whom 139,176 were Yugoslavs, 57,794 Turks, 13,678 Germans and some 10,000 Poles, Hungarians, Romanians and Czechs. He did not have the necessary figures to enable him to compare the unemployment rates of immigrants and nationals, or to estimate how many foreign workers had returned to their country of origin or had acquired Austrian nationality. Aliens coming to work in Austria were granted a two-year work permit, which was extended if they had worked for a certain length of time in the course of those two years. After having lived for eight years in Austria and worked for five years during that period, immigrants could obtain a permanent work permit. Such permits were valid only in one State. With reference to the question concerning employment of immigrants in agriculture, he pointed out that there were no longer any large landowners in Austria, and that farms were not big enough to recruit immigrant workers. On a further point, if a foreign man or woman married to an Austrian should become divorced, that person would retain Austrian nationality if he or she had acquired it.

24. Concerning the educational problems of Yugoslav children, it was difficult to say whether or not such problems were due to language, since in general children of foreign mother tongue received special teaching in their own language.

25. In regard to questions concerning the Mediation Service, he would like to clear up a few misunderstandings. The purpose of the Mediation Service was to resolve problems of an administrative nature and to provide information and explanations on relevant administrative procedures. It was not concerned with legal questions, and did not give rulings on payment of compensation. It was not competent to challenge judicial decisions, and could only refer a verdict it considered unjust to the Constitutional Court with a request that it should be set aside. Mediators received a salary of 107,000 schillings (the average working wage being 20,000 schillings), a salary equivalent to that of a Secretary of State. That salary was subject to an increase every two years, like that of Government officials. Migrant workers had access to the

Mediation Service, and there was no time-limit for applying. In 1991, 4,783 complaints had been lodged, as against 5,675 in 1990. The Mediation Service had declared itself competent in 80 per cent of cases. Tyrol and Vorarlberg had not recognized the competence of the national Mediation Service, and had preferred to set up their own service.

26. On the matter of monitoring the effectiveness of remedies, he said that the Austrian Government did not conduct periodic surveys to determine whether residents had been the victims of particular offences or acts of discrimination, such as, for example, those carried out by the British Government in England and Wales. That system seemed to him an interesting one, and he wondered whether the Committee should not study the question of remedies and propose a solution to States parties in its concluding observations or in the form of a recommendation.

27. The question on the scope of article 1, paragraph 2, of the Convention seemed to imply that the Convention did not apply only to States, but also to relations between individuals. That was an entirely new concept, which in his view was not in keeping with the spirit of the Convention.

28. With reference to the Federal Constitutional Law of 3 July 1973, under which the Executive was required to refrain from discrimination on the sole ground of race, colour, descent or national or ethnic origin, he wondered exactly what was meant by the term "discrimination". Did it imply different treatment, or unjustified treatment? If the latter were the case, the restriction contained in the law would indeed be open to criticism. He pointed out, however, that there did exist positive forms of discrimination, such as exemption from military service, as well as justified and non-discriminatory forms of different treatment applied to aliens, such as requests for visas.

29. Mr. Banton had made reference to Australian legislation the effect of which was to reverse the burden of proof; in his view, such a measure would only be justified in very specific cases, since if the right to a remedy was automatic, anyone could allege that he had been a victim of racial discrimination and it would then be for the accused party to prove the contrary. In fact, it was normal practice for every complainant to take responsibility for his allegations, and it was only in very rare instances that derogation from that principle might appear justified. In cases of that kind, there was a danger that reversal of the burden of proof might lead to abuses. For example, it might happen that when there were four applicants for a post and only one was chosen, the others might claim that they had been rejected for reasons connected with their race, and might sue the employer for damages: how was the latter to prove that nothing of the kind had occurred? It would seem most unwise to put an employer in such a position.

30. Mr. ABOUL-NASR, referring to the question raised by Mr. Berchtold as to whether there was a need to repeat in each report basic information already provided earlier, said that when the Convention was consulted on that point it would appear that States parties were expected to submit a full initial report, and later periodic reports in which, without repeating information initially supplied, they would give details of any new developments that had occurred in the period under consideration and would reply to questions by the Committee. The latter did not wish to have before it voluminous documents

which it would have to search through to find the relevant material, since the Secretariat prepared a complete dossier for every member containing the previous reports of the country concerned as well as the summary records of the meetings at which they had been considered. Accordingly, when preparing its report, the country should confine itself to any new developments and problems encountered during the period under consideration, if necessary making reference to earlier documents.

31. He noted that there was a tendency to employ the term "anti-Semitism" in the sense of discrimination against Jews, whereas in fact Arabs were also Semites, and the term should be understood as implying discrimination against both alike.

32. Lastly, Austria was greatly concerned at the events which were currently taking place in its neighbouring country, the former Yugoslavia, and was playing a very active role, notably in the Security Council. Since it was particularly well placed to assess the scale of the problem, would Austria be prepared to invoke article 11 of the Convention and bring that very serious matter to the attention of the Committee?

33. Mr. WOLFRUM associated himself with the question just raised by Mr. Aboul-Nasr concerning implementation of article 11 of the Convention. He thanked Mr. Berchtold for his oral statement, which was a welcome supplement to an over-brief report. In that connection, mention had been made of the existence of a document on minorities in Austria, and he would like that document to be circulated to members of the Committee.

34. Mr. BANTON said he was satisfied with the replies given by Mr. Berchtold, except on the following points: article 5 (e) (i) of the Convention guaranteed everyone full equality before the law in regard to the right to work; moreover, the survey conducted by the Austrian Gallup Institute in 1991 had revealed - as had already been pointed out - some disquieting figures on the readiness of many Austrians to deny or restrict the exercise of these rights by Jews. It was not enough to offer an evasive reply, to the effect that the Convention did not make it obligatory for everyone to like Jews. In that context, and concerning effective implementation of article 6 of the Convention, the argument that Austrian legislation afforded all the protection that was needed, and provided for remedies, did not necessarily mean that victims of racial discrimination obtained effective compensation in practice. The survey carried out in the United Kingdom on the effectiveness of the protection offered by the law was significant in that connection, because it had shown that very often, and for all kinds of reasons, victims did not bring cases to court, and that accordingly much remained to be done to improve the effectiveness of the law.

35. Lastly, he hoped that the representative of Austria would give more thought to the question of reversal of the burden of proof. The fears voiced by Mr. Berchtold were certainly exaggerated, and were perhaps more specifically concerned with criminal proceedings. The problem did not arise in the same way in civil cases; in any event, Austria should take note of what was done in that regard in other countries, where efforts were made to put the parties on a genuinely equal footing before the law.

36. Mr. FERRERO COSTA noted with satisfaction that it had been possible to engage in a fruitful dialogue with the representative of Austria despite an over-brief report, and associated himself with what had been said by Mr. Aboul-Nasr in regard to the content of periodic reports. The latter were in fact expected every two years, and not every four or six years as some countries seemed to believe; in the case of delay in submission of a report, obviously that report should be made fuller, and should provide all the necessary information on any events of a political, jurisprudential or practical nature that had occurred at any time in the period under consideration. Reports submitted to the Committee concerned human societies, which were by nature dynamic, and they should be neither static nor repetitive. Lastly, they should be drafted in conformity with the specific guidelines that had been provided by the Committee.

37. Mr. van BOVEN thanked the representative of Austria for the detailed information given to the Committee; he would nevertheless point out that both he himself and Mr. de Gouttes had raised a question concerning the declaration provided for under article 14 of the Convention. Of course, Mr. Berchtold was not being asked to reply immediately, but it would be useful to know whether the problem was to be brought up again with his Government and whether it was to be dealt with in the next report.

38. He fully understood that Austria should take a cautious line concerning reversal of the burden of proof. However, as had been pointed out by Mr. Banton, the problem did not arise in the same way where a civil case was concerned. The Supreme Court of the Netherlands had taken some significant decisions in that connection, notably regarding housing, when all the indications were that there had been discrimination; there had been one case, in particular, where after statistics had shown - though without it being possible to provide any real proof - that discriminatory practices existed in housing allocation policy, it had been decided that it should be for housing programme officials to provide proof of absence of discrimination.

39. Mr. GARVALOV said he had listened with particular interest to the replies of a country that was in many respects close to his own. He noted with some concern that not a single case of racial discrimination had ever been brought before the Austrian courts. That could be explained in two ways: either there was no racial discrimination in the country (which was unfortunately unlikely, in today's world), or else victims of discriminatory practices hesitated for various reasons to lay the matter before a court - or were even afraid to do so.

40. The Austrian authorities had had to face a disquieting situation as a result of the influx of immigrants from neighbouring countries, together with all the problems which that influx involved: the right of the receiving country to control immigration, its duty not to carry out the reception procedure in a discriminatory fashion, etc. The problem was particularly delicate at the present time and in that region of the world. In that connection, he remembered having heard an eminent representative of Austria on the Commission on Human Rights suggest that the time had come to consider drafting a convention on the rights of minorities. A proposal to that effect had been made to the Council of Europe, and he would like to know whether Austria, as a member of the Council, would consider adoption of such a convention desirable.

41. Lastly, the representative of Austria had stated that his Government had conferred autonomy on certain ethnic groups at the administrative level: he would like to know the precise scope of that autonomy.

42. Mr. BERCHTOLD (Austria) feared there had been some misunderstanding on that point: he had not spoken of the autonomy of minorities; rather, Austria, aware that a vast problem regarding ethnic minorities was now arising throughout Europe, considered that the convention on the matter contemplated by the Council of Europe might be useful.

43. Concerning possible application by Austria of article 11 of the Convention in regard to the events that were currently tearing the former Yugoslavia apart, he would put the question to his Government; he would also raise the matter of the optional declaration provided for under article 14 of the Convention. As to reversal of the burden of proof, that question was a very delicate one, which would require lengthy debate. In conclusion, he assured the Committee that no one in Austria need have anything to fear in bringing a case of racial discrimination before the courts.

Mr. Berchtold (Austria) withdrew.

Mr. Ahmadu, Vice-Chairman, took the Chair.

Ninth and tenth periodic reports of Chile (CERD/C/196/Add.1) (continued)*

At the invitation of the Chairman, Mr. Bengoa and Mr. Oyarce (Chile) took places at the Committee table.

44. Mr. SONG Shuhua noted that compared with previous reports the current report by the Government of Chile was quite remarkable, in that it recognized with great frankness the serious discrimination from which the indigenous populations of Chile were still suffering: those populations were deprived of their rights even to such essentials to life as land and water. The commendable attitude of the present authorities marked an entirely new phase, which raised hopes of a full and unequivocal implementation of the Convention.

45. It emerged from the report under consideration that the communal system of land ownership in use among the indigenous peoples had been dismantled in the course of centuries, and that the land problem had still not been resolved where they were concerned. In the light of past history and current reality, how did the Chilean Government plan to find concrete solutions to such basic problems as land distribution, access to water resources and communal ownership?

46. Mr. FERRERO COSTA said he had taken note with great satisfaction of a report which gave evidence of far-reaching changes currently taking place in Chile. Having closely followed developments all through the transition period the country had experienced, he believed Chile had embarked on a highly innovative policy as compared to other Latin American countries on the

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* Resumed from the 945th meeting.

question of indigenous populations. The report provided an in-depth analysis of the subject, whereas previous reports had barely referred to it. The document was highly satisfactory on two counts: first, it provided the Committee with a great deal of basic data not previously available to it; and, secondly, it admitted in all frankness that racial discrimination did exist in regard to indigenous peoples in Chile. As Mrs. Sadiq Ali had pointed out, that was an excellent starting-point for tackling the task of eliminating all discriminatory practices. The problem now was how the Government would set about that task, and the questions that had been raised were extremely interesting; he hoped that the Chilean delegation would be able to reply to them. Where preparation of the next report was concerned, Chile would need to follow the guidelines given by the Committee. That had not been the case with the current report, which was quite understandable in view of the circumstances. It would be particularly interesting to have details of any legislative and constitutional amendments introduced to enable the country to move from dictatorship to democracy.

47. The Committee needed more exact information on four questions in particular: first, the economic situation; secondly, the legislation adopted in regard to indigenous populations, notably the population which had been involved in the dispute referred to in paragraph 56 of the report; thirdly, relations between Chile and South Africa in the commercial and diplomatic fields, among others; and, fourthly, any manifestations of racial discrimination which could affect the rest of the population, in addition to the indigenous peoples. Where the latter aspect was concerned, he believed that there were perhaps fewer such problems in Chile than in other Latin American countries, because its population was more homogeneous. Nevertheless, the Committee ought to be given a clearer picture of the situation. Lastly, he expressed the hope that the new democratic Government would soon make the declaration provided for under article 14 of the Convention.

48. Mr. de GOUTTES said he too was pleased to note the results of Chile's return to democracy, results which had also been beneficial in regard to the combating of racial discrimination. He appreciated the frankness shown in the report (CERD/C/196/Add.1), and the useful historical outline given in chapter I. That chapter showed that, in the past, Chile had veered between a policy of forced assimilation and a policy of differentiation which kept the indigenous populations confined to their own lands. On the other hand, he found chapter III somewhat unsatisfactory. The account of how the various articles of the Convention were implemented was too brief, and contained too many omissions. Subsequent reports should provide more details on texts penalizing acts of racism, on corresponding remedies before the courts, and on the situation of minorities other than indigenous peoples, notably aliens, blacks, and peasant communities.

49. Mr. van BOVEN found the plentiful information given in the report (CERD/C/196/Add.1) regarding indigenous populations all the more interesting in that under the previous regime he had noted that although a number of political groups (Communists, Socialists, Social Democrats, Christian Democrats, etc.) had succeeded in sending information abroad and in obtaining support there, that had not been the case for the indigenous populations. The situation of such populations had still been too little known. The Committee should be grateful to the new Chilean Government for describing the situation frankly in its report, notably in the useful historical outline.

50. He asked whether the bill on the protection, advancement and development of the indigenous peoples described in paragraph 65 et seq. had already been adopted. Like Mrs. Sadiq Ali, he noted a discrepancy between the figures concerning indigenous populations provided in paragraphs 58 and 65 of the report; when the figures given in the former were added up, they did not produce the total figure of 1 million indicated in the latter. Concerning paragraph 67 (o) of the report, which stated that the opinions of indigenous organizations had to be taken into account in matters related to indigenous questions, he pointed out that ILO Convention No. 169 not only made it obligatory to consult indigenous peoples, but also required their consent in matters of concern to them; it would be useful to know how far the Chilean Government went in that regard.

51. Lastly, he too expressed the hope that the new democratic Government would make the declaration provided for in article 14 (1) of the Convention, which would enable procedures designed to eliminate racial discrimination to be strengthened.

52. Mr. YUTZIS said he found it particularly interesting that the report of Chile should have presented a detailed historical outline of the evolution of its indigenous populations in the year of the five-hundredth anniversary of the European presence on the American continent. Unfortunately, that outline revealed a long history of oppression.

53. The report also mentioned proposed constitutional reforms and various bills concerning the indigenous populations, which it was to be hoped would be adopted as quickly as possible. In that connection, he pointed out that in addition to the information provided in the report, he had heard accounts of often violent land disputes between indigenous inhabitants and owners of lands which had once been indigenous, but which had been handed over to colonists at some time in the past. He welcomed the fact that the State, as had been pointed out by the Chilean delegation, had taken steps to purchase an estate subsequently handed over to the indigenous peoples in the south of the country, which indicated a commendable political will on its part. Easter Island had also experienced disputes, which were referred to in paragraph 56 of the report. The Committee should be kept informed of any developments in that situation, and also of the progress of the civil writ which had been entered and was now before the courts. Lastly, he hoped that information would be provided concerning action taken against racist propaganda and racist organizations, in accordance with article 4 of the Convention.

54. Mr. SHAHI also welcomed the historical outline given in the report under consideration, and the evidence it contained of the Government's willingness to remedy the abuses in question. The new democratic Government had fortunately overturned the policy of the Pinochet regime which had been opposed to indigenous traditions and languages. Like other members of the Committee, he would like to draw attention to the statistical discrepancy between paragraphs 58 and 65 of the report where indigenous populations were concerned. Regarding paragraph 67, he would be glad to have details concerning the representation of indigenous people at national level, representation which should be of considerable proportions if there were 1 million Chileans belonging to ethnic groups out of a total population of some 13 million.

55. The CHAIRMAN said the Chilean delegation would reply to the questions raised by members of the Committee at its 948th meeting, on the morning of Monday, 10 August.

ORGANIZATION OF WORK (continued)*

56. The CHAIRMAN read out a letter dated 7 August 1992 in which the Permanent Mission of the Somali Democratic Republic in Geneva requested that, in view of the civil strife in the country and the period of transition it was now undergoing, consideration of the report of Somalia, scheduled to take place at the current session, should be postponed until the following session. The Permanent Mission stated that the Somali Government would submit its report to the Committee as soon as the situation had returned to normal.

57. He had also received a letter from the Permanent Mission of Zambia to the United Nations Office at Geneva, dated 4 August 1992, stating that it was not in a position to prepare a comprehensive report for the current session, and asking to be given an extra month to complete it.

58. Mr. BANTON said that if consideration of the report of Somalia was to be deferred, a date should be set for it, in order to avoid any difference in treatment from other countries.

59. Mr. YUTZIS supported that request.

60. Mr. SHAHI pointed out that in the past the Committee had indeed set a date when it had decided to postpone consideration of a report. In the case of Somalia, however, it should be borne in mind that the situation was an abnormal one, in which the Committee could not even be certain that, if it made comments, any authority in the country would be able to take cognizance of them.

61. Mr. AHMADU expressed the view that the Committee should wait until the situation in Somalia improved before setting a date.

62. Following a discussion in which Mr. GARVALOV, Mr. BANTON, Mr. WOLFRUM and Mr. FERRERO COSTA took part, the CHAIRMAN proposed that the Committee should decide not to take up the report of Somalia at the current session, and to grant the request by the Permanent Mission of Zambia.

It was so decided.

63. In reply to a request for clarification from Mr. DIACONU, Mr. TIKHONOV (Secretary of the Committee) stated that at the current session the Committee would be called upon to prepare comments for submission to the General Assembly on draft model legislation for combating racial discrimination which the Secretariat had prepared; that draft should be a fairly short text, of two or three pages.

The meeting rose at 6.10 p.m.

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* Resumed from the 938th meeting.

CERD/C/SR.948
13 August 1992

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-first session

SUMMARY RECORD OF THE 948th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 10 August 1992, at 10 a.m.

Chairman: Mr. DIACONU

The meeting was called to order at 10.10 a.m.

ORGANIZATION OF WORK (continued)

1. Mrs. KLEIN-BIDMON (Centre for Human Rights) informed the Committee that the Chairman, Mr. Valencia Rodriguez, had unfortunately been taken ill and was in hospital. Mr. Diaconu would therefore take the Chair at the present meeting.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7) (continued)

Ninth and tenth periodic reports of Chile (CERD/C/196/Add.1) (continued)

At the invitation of the Chairman, Mr. Bengoa, Mr. Ivlic, Mr. Llanos and Mr. Oyarce (Chile) took places at the Committee table.

2. Mr. BENGOA (Chile) thanked members of the Committee for their positive comments both on the tenth report, which was combined with the ninth, and on the political situation in his country. As Mr. van Boven had pointed out, the people of Chile had cause to be grateful to international organizations for what they had done to help restore democracy. His delegation would transmit to the President the view expressed by a number of members - a view with which he fully concurred - that Chile should make the declaration provided for under article 14 of the Convention as soon as possible as a further stage in the democratization process.

3. As an illustration of how indigenous peoples in Chile suffered from discrimination, he quoted from a newspaper report stating that 63 applications for changes of name had been published in one issue of the Official Bulletin. The changes had been applied for on the ground that indigenous names were a barrier to obtaining employment. Discrimination was a complex phenomenon in Chile and was as yet not governed by legislation, although the Government was making efforts to combat it. It would be a sign that those efforts were succeeding if in a few years' time applications for changes of name had decreased.

4. Members of the Committee had asked whether other minorities in the country suffered from discrimination. There were practically no groups which were discriminated against on purely ethnic or racial grounds. Neither colonies of Europeans nor immigrant groups suffered from such treatment, nor did the small black population. There was a long-standing tradition in Chile of welcoming immigrants, who were regarded as enriching Chilean society and were accordingly rapidly assimilated.

5. Several speakers had expressed concern about the political situation in Chile. After 18 years of military government, democracy had been restored, not by revolution but by a peaceful and orderly process of negotiation. In reply to Mrs. Sadiq Ali, he said that the Constitution of 1980 had been amended following a plebiscite in 1989, and it was that amended Constitution that was now in force. The Commander-in-Chief of the Army, who could not be removed from his post, was still General Pinochet. Members of the Senate were elected, but many were still those appointed under the previous regime, and the same was true of members of the Supreme Court. A bill was now before

Parliament which was to introduce far-reaching changes in the administration of justice. Among the important constitutional reforms adopted was one empowering the President to pardon political prisoners.

6. In reply to a question from Mr. Ferrero Costa, he said that the Mapuches were among the poorest sections of the population. A recent study had shown that, in terms of infant mortality, morbidity and illiteracy, they were below the national average. Because of the greater number of job opportunities in the cities, the rate of migration among Mapuches was high. The situation of the Aymara and Rapanui people was somewhat better, since although relatively poor, they possessed more resources.

7. On the question of the demographic composition of the population, it was difficult to obtain figures, and thus the report might contain some contradictions. Altogether, the indigenous population numbered approximately 1 million. In the population census taken on 2 April 1992, Chileans had for the first time been asked to state their ethnic origin. The results of that census would be available in a few months, and he would transmit them to the Committee.

8. Questions had been raised concerning the Yamanas, the Alacalufes, the Kawashkar and other minorities in the extreme south of the country. The four tribes that had previously inhabited that part of the country had been decimated following the invasion of colonizers from the mainland, and as a result only very small numbers of them remained. A year earlier, an organization had been set up in Punta Arenas for the benefit of some 50 young people of indigenous origin who had left their communities; two had been given scholarships to university and seven were following technical courses. It was hoped to build a centre in the region to develop a programme of activities for such people and to begin the process of re-identifying indigenous groups. The draft Indigenous Peoples Act now before Parliament provided for the granting of special fishing rights, and rights over other resources, to indigenous peoples, and it was hoped that such measures would help to halt the process whereby they were gradually becoming extinct.

9. A number of questions had been raised concerning the territory of the Mapuches: it was true that many Mapuche organizations had opposed the parcelling out of communal land. Under the military regime, more than 60,000 land titles had been allocated with the result that 2,000 existing community holdings had been abolished. With the advent of democratic government in May 1990, those land allocations had been declared invalid, and consultations had been held with the various communities on how best to regulate the situation from the legal point of view. The bill currently under discussion provided for a combined system of individually owned and communally owned land. Generally speaking, land in the vicinity of dwellings and land used for horticulture would be private, whereas forests and pastures would be communal. It was proposed to set up an Indigenous Land and Water Fund, which would enable the communities to acquire further resources. In reply to Mr. van Boven, he said that the bill had been approved by the Chamber of Deputies, and he hoped it would become law in the course of the year. Its provisions ensured that Mapuche territory would be protected from potentially destructive commercial pressures, and it also provided for a speedy and effective land claims procedure, to be financed by the Government.

10. It was true that there had been serious problems in regard to land disputes, notably in Cautín, and other conflicts over the construction of hydroelectric and other projects, but there was hope that they would be resolved harmoniously, given the Government's firm political will to find solutions to such problems by peaceful means.

11. In reply to a further question from Mrs. Sadiq Ali, he said it was true that the northern part of the country was virtually a desert zone where water was a vital resource, and that indigenous communities had suffered from pressures by mining companies in that respect. In June 1992, an Act had been passed amending the Water Code to prohibit exploitation of water resources on which indigenous communities depended.

12. In Easter Island, the Act of 1966 restricting access to private property to inhabitants of the Island was still in force. The Easter Islanders had in fact entered a writ against the State on the matter in 1988, a writ which had been suspended for two and a half years pending adoption of the new Indigenous Peoples Act now before Parliament. Recently, local elections had been held on the Island, and a new Chief of the Council of Elders had been elected. Discussions were now being held with the Council on the introduction of a new legal regime.

13. Participation of indigenous peoples in the country's poltical life would be regulated under the bill now before Parliament, which would also provide for judicial remedies in cases of discrimination. One significant measure under that bill would be the establishment of an Indigenous Development Corporation, half of whose members would be appointed by the Government, and half by indigenous groups. It was hoped that indigenous participation in public life at all levels would increase. He pointed out that, in keeping with the country's liberal traditions, there was no "quota" for elections to Parliament or for local elections: members were elected by universal suffrage, on their own merits, and not in the capacity of representatives of their particular indigenous group.

14. In reply to Mr. Ferrero Costa, he said that while relations with South Africa had been encouraged under the military regime, they had been played down under the new Government. Recently, however, a Chilean ambassador had been accredited to South Africa in recognition of that country's progress towards a united, multiracial and democratic regime. Chile had complied with all resolutions of the Security Council and the General Assembly in that regard. The Government's policy was to support all efforts to eliminate apartheid in South Africa.

15. Where discrimination against the rural and urban poor was concerned, it was true that severe poverty existed in many parts of the country, but it could not be said that the poor suffered from racial or ethnic discrimination in terms of article 1 of the Convention.

16. Mrs. Sadiq Ali had asked whether organized groups promoting racial discrimination existed in the country. Fortunately, he was not aware of any such groups. Frequent public discussions on the subject of discrimination were held on television and radio, and the Ministry of Education had launched a programme designed to increase public awareness of the issue.

17. Chile was emerging from a long period of human rights violations, and the Government was determined that such an era in its history should never be repeated. Its wish was to collaborate with the Committee, in the knowledge that any form of discrimination anywhere in the world had its effects on all countries and on peoples everywhere. He assured members that Chile's next report would comply fully with the Committee's guidelines.

18. The CHAIRMAN thanked the representative of Chile for the full replies he had given to the Committee's questions.

19. Mr. van BOVEN said he, too, wished to thank the Chilean representative for his very extensive replies. He noted with satisfaction the latter's announcement that his Government would soon be making the declaration provided for under article 14 of the Convention.

Mr. Bengoa, Mr. Ivelic, Mr. Llanos and Mr. Oyarce (Chile) withdrew.

Initial report of Viet Nam (CERD/C/101/Add.5)

At the invitation of the Chairman, Mr. Nguyen Luong (Viet Nam) took a place at the Committee table.

20. Mr. NGUYEN LUONG (Viet Nam) said, in accordance with the instructions it had received, his delegation formally requested the Committee to defer consideration of the Vietnamese report until the next session, so as to enable the Government to produce an updated document in the light of current changes. He would welcome the Committee's advice and suggestions on the content of the forthcoming report.

21. Viet Nam, a multinational State, intended to pursue its policy of ensuring that all citizens had equal rights and duties; that included the ethnic nationalities, whose welfare and advancement were promoted in accordance with the Convention. Article 5 of the new Constitution of Viet Nam provided, *inter alia*, that the State of Viet Nam was the unitary State of all nationalities living together in its territory. It implemented a policy of equality, solidarity and mutual assistance among the nationalities, and all acts of discrimination and division between the nationalities were strictly prohibited. The ethnic nationalities had the right to use their own spoken and written language, to preserve their national identity and to practise and enjoy their own customs, traditions and cultures. The State pursued a policy of overall development in order to raise the standard of living and cultural level of the ethnic nationalities. Under a Council of Ministers' decision of February 1990, a special government office had been made responsible for the economic and social development of the ethnic nationalities and for political questions concerning them. It was in charge of the implementation of the development plan for the highlands - the regions in which those communities lived - up to the year 2000. In articles 29, 35 and 36, the 1992 Constitution made special provision for education and human resources development in the regions inhabited by ethnic nationalities, while the Council of Ministers ensured that the relevant financial and budgetary measures were taken to guarantee the implementation of those provisions.

22. At the international level, the Government of Viet Nam undertook to continue to support the struggle of peoples against racial discrimination and

segregation. He took the opportunity to submit to the Committee a statement made on 25 July 1992 by the spokeswoman of the Ministry of Foreign Affairs of Viet Nam on the recent massacre of two Vietnamese families in Cambodia. Public opinion considered the massacre to be inspired by racial hatred, and he hoped that the Committee would not let it go unnoticed.

23. The CHAIRMAN noted that the representative of Viet Nam had requested that consideration of its periodic report should be postponed until 1993, and that the delegation was now seeking the Committee's advice in preparing that report. He asked Committee members whether they wished to confine the discussion to comments and advice in response to that request.

24. Mr. de GOUTTES said that, as country rapporteur designated to make a preliminary study of the implementation of the Convention in Viet Nam, he welcomed the presence of the representative of Viet Nam and was willing to present the ad hoc report he had prepared on the basis of existing documents.

25. Mr. YUTZIS commended the Government of Viet Nam's clear desire for dialogue. Given that country's special circumstances, the Committee should agree to its specific request for rescheduling of the consideration of the periodic report and, in the meantime, provide it with advice in preparing that report.

26. Mr. ABOUL-NASR said that the particular circumstances of Viet Nam, as described by its representative, warranted postponement of consideration of its report. With regard to advice on how to proceed in preparing a report, he referred the representative of Viet Nam to the Committee's guidelines, which could be transmitted to the Government, together with previous reports of the Committee.

27. Mr. de GOUTTES suggested that, pending the rescheduled consideration of Viet Nam's report, to which the Committee clearly agreed, a preliminary exchange of views might be held on the basis of documents that were available to the Committee.

28. Mr. SONG Shuhua supported the proposal to postpone consideration of Viet Nam's report in view of recent and current developments in that country. He, too, drew attention to the Committee's guidelines and agreed to giving the delegation of Viet Nam some advice on the preparation of its report, but would not be in favour of a lengthy discussion, since a report would be forthcoming in 1993.

29. Mr. YUTZIS said that there appeared to be consensus on considering the periodic report in 1993. That being so, he drew the attention of the Vietnamese delegation to a fundamental principle, namely, that the very existence of the Committee largely depended on the seriousness with which States parties discharged the responsibilities to which they had subscribed on acceding to the Convention, including their reporting obligations. Viet Nam's periodic report was long overdue, and he trusted that it would now be submitted, as promised, in 1993.

30. The advisory services available within the Centre for Human Rights might be useful in helping the Government of Viet Nam with some of the procedural aspects of preparing its report.

31. Referring to the written statement submitted by the representative of Viet Nam concerning an incident which had occurred in Cambodia and involving a complaint against that country, he drew attention to article 11 of the Convention and to the possibility of submitting such a complaint under that article. If the Committee agreed, the representative of Viet Nam might convey that possibility to his Government, should the denunciation fall within the scope of that article.

32. Mr. van BOVEN commended the Government of Viet Nam on its willingness to engage in a dialogue and looked forward to receiving its written report as soon as possible. He suggested that the Committee might usefully hear the observations prepared by the country rapporteur, to which the representative of Viet Nam could respond as he saw fit, but refrain from drawing any conclusions and making final recommendations until it was able to consider the substantive, updated report.

33. Mr. SHAHI endorsed the comments made by Mr. Yutzis and agreed that consideration of the periodic report should be postponed. He supported the suggestion that the representative of Viet Nam might avail himself of the opportunity to seek guidance on reporting procedures from the Centre for Human Rights.

34. Mr. RECHETOV said that the procedure suggested by Mr. van Boven did not appear to allow for a full exchange of views within the Committee. He pointed out that there was nothing in the Convention to say that a report had to be submitted in writing, and there had been many cases in the past when the Committee had proceeded with a discussion of the situation in a given country even when the written report contained no factual information.

35. The CHAIRMAN said he took the prevailing view to be that, in the case now before the Committee, the Committee should not enter into a substantive debate in the absence of a written report, but that the comments prepared by the country rapporteur, adjusted to suit the changed circumstances, might provide useful background information.

36. Mr. de GOUTTES said that he had prepared a number of comments that might contribute to a preliminary exchange of views. First of all, the Committee should welcome the Government of Viet Nam's obvious willingness to renew its dialogue with the Committee by sending a delegation to explain its position. Even though no written report had been submitted, it was a laudable gesture at a time when the country was passing through a period of difficult transition and reconstruction.

37. Since becoming a party to the Convention in 1982, Viet Nam had submitted only one report to the Committee. He had consequently examined the situation of Viet Nam on the basis of other available information, both general information from non-governmental organizations and more specific information from other United Nations sources, in particular, Viet Nam's initial report to the Human Rights Committee on its implementation of the International Covenant on Civil and Political Rights, dated 7 July 1989.

38. On the basis of that information, the Committee should consider the reasons for Viet Nam's delay in submitting reports, recall its own assessment of the situation in Viet Nam when it had considered Viet Nam's previous report

in 1983, and specify what it now expected of that country. With regard to its failure to submit reports, there were extenuating circumstances - successive wars, a precarious economic situation and internal problems, especially the imperatives of reconstruction and renewal. The fact that Viet Nam had taken an initial step by submitting a report to the Human Rights Committee was encouraging. The Committee was sensitive to the difficulties of countries which did not have the administrative resources and facilities to fulfil their reporting obligations. He suggested that the Committee should offer technical assistance to the Government of Viet Nam for that purpose, with the help of the advisory services of the Centre for Human Rights.

39. Recapitulating the Committee's assessment of Viet Nam's initial report, he said that the initial report had failed to follow the guidelines and had been too general and too brief. Insufficient information had been given on the ethnic and demographic composition of the country. The Committee had raised the question of the exodus of refugees, noting that there must have been some compelling reason to force so many people from their homes. The Committee had also requested details of the latest constitutional provisions, noting some discrepancy between the 1946, 1959 and 1980 Constitutions.

40. With regard to the effective implementation of articles 2 to 7 of the Convention, the Committee had found the information provided to be inadequate, and had asked a series of questions and requested a number of explanations regarding, for instance, the Council of Nationalities responsible for ethnic affairs.

41. Viet Nam's report to the Human Rights Committee in 1989 and that Committee's conclusions on the subject contained more recent information of interest to the Committee, for instance, on ethnic minorities in Viet Nam and on the preparation of a new Constitution, as well as the information that the Convention on the Elimination of All Forms of Racial Discrimination could be incorporated into Viet Nam's legislation.

42. What, therefore, should now be expected of the Vietnamese Government? In general, it should be requested to furnish, as soon as possible, a comprehensive and updated second periodic report, submitted in accordance with the new guidelines on the format and content of reports adopted by the Committee in 1991. The report should consist of two parts, the first dealing with the framework in which the Convention was being implemented, namely the country's current social, economic, political and institutional situation, and the second with the actual implementation of each article of the Convention. Certain issues would be of particular concern to the Committee, including socio-economic and demographic indicators and details concerning the major changes now under way.

43. It was often claimed that Viet Nam was fully committed to economic revival, transition to a market economy and the principle of opening up the country to the international community, but it appeared that the Communist authorities were concerned to maintain the predominance of the State apparatus and the Party. Admittedly, available information indicated that the new Constitution adopted on 15 April 1992 represented a significant step forward towards a State based on the rule of law, guaranteeing freedom of speech, association, the press and religious belief, without asserting the primacy of socialism. It also contained new provisions on the law of property and

inheritance and free enterprise. In 1990, however, the Human Rights Committee had concluded that the Government stressed too systematically the sovereign rights of the State over the individual and that, while the war had undoubtedly been responsible for many of the difficulties experienced by Viet Nam in implementing the provisions of the Covenant on Civil and Political Rights, it should not be used to justify the restriction of certain rights and freedoms. The Government should provide explanations in that connection and details regarding the new Constitution, the implications of the general elections and the process of democratization.

44. The next report should indicate how the Convention had been incorporated in domestic legislation, whether it took precedence over domestic law and whether it could be invoked before the courts.

45. Turning to the specific articles of the Convention, and article 2 in particular, he said that the Vietnamese Government should respond to the concern expressed by the Human Rights Committee in 1990 regarding discrimination between north and south Vietnamese and any tensions or resentments to which it might have given rise. It should also indicate what steps had been taken to combat the traditional prejudices against minority ethnic groups regarded as having collaborated with France and the United States in opposing the Vietnamese liberation forces. It seemed that certain groups were particularly disadvantaged in material terms, especially as far as access to education was concerned.

46. Another source of concern was the fate of children of mixed background in Viet Nam. Such children were often regarded as pariahs, being abandoned by their irresponsible fathers and by their mothers, who were hesitant to acknowledge them. What steps was the Government taking on their behalf, particularly in the light of its ratification of the Convention on the Rights of the Child?

47. In the case of articles 4 and 6, he hoped that the next report would provide the texts of legislation penalizing racial or ethnic discrimination, and details of the outcome of cases arising from such laws.

48. In connection with article 5, he said that the Committee wished to receive information on people still interned in rehabilitation camps. Although many were known to have been released, some former soldiers and officials of the Saigon regime were evidently still being detained. What was being done to improve conditions in those camps and, more important, what steps were being taken to eliminate them? Questions also arose in connection with restrictions on movement and on the right to leave the country, and with the system of residence permits, which might constitute an infringement of the right to privacy.

49. The Committee also wished to be informed of the current status of refugees, and especially the "boat people". The representative of Viet Nam had stated in the Human Rights Committee in 1990 that voluntary repatriation from countries of first asylum would be in conditions of safety and dignity and without repressive or discriminatory measures. However, according to available information, the Vietnamese Government, in order to intensify its efforts to curtail "illegal departures", had concluded an agreement in October 1991 with the United Kingdom providing for forced repatriation of

refugees in Hong Kong. In addition, the Committee wished to be informed of the fate of the many Vietnamese workers sent to the former Soviet Union and certain East European countries, where they had often lived in very difficult circumstances.

50. Noting that the new Constitution made no mention of the right not to be subjected to discrimination for reasons of political opinion, he inquired what compensation was available to victims of such discrimination. In the context of the right to freedom of religion, reports had been received of surveillance and harassment of religious leaders, both Buddhist and Catholic, and the Committee would wish to know whether officials responsible for such persecution had been punished. There also seemed to be instances of discrimination in the system of registration, in that failure to register or exclusion could involve forfeiture of the right to housing, employment, health-care and the education of children.

51. With regard to the implementation of article 7 of the Convention, the Committee wished to know whether measures had been taken in Viet Nam to publish and promote awareness of the Convention, and more generally to disseminate information on combating racial prejudice and defending human rights. Were the Vietnamese authorities encouraging the activities of non-governmental organizations for the defence of human rights, and were they continuing their cooperation with Amnesty International and the International Committee of the Red Cross (ICRC)?

52. In conclusion, he welcomed the fact that a Vietnamese representative had been able to be present to resume the dialogue with the Committee. The questions raised showed the keen interest the Committee took in the process of democratization in Viet Nam.

53. Mr. NGUYEN LUONG (Viet Nam) thanked the Committee for the ideas put forward during the discussion, which would be duly conveyed to his Government and taken into account in his country's next report.

54. On the question of refugees, he wished to mention that he was involved in the repatriation process, and that a comprehensive action programme for refugees had been worked out in collaboration with ICRC. A representative of the United Nations High Commissioner for Refugees (UNHCR) was actively monitoring the repatriation in order to ensure that it was carried out in an orderly fashion and with due respect for human dignity. The problem was purely humanitarian in nature and should not be politicized. In regard to ethnic groups, he said that both the Government and the new Constitution stressed the need to promote the human resources of those groups through education and development.

Mr. Nguyen Luong (Viet Nam) withdrew.

55. The CHAIRMAN said the Committee seemed to be in agreement that consideration of the report of Viet Nam should be postponed until 1993, and that it should draw the Vietnamese Government's attention to the availability of the advisory services of the Centre for Human Rights. The Permanent Mission of Viet Nam would contact the Centre in order to ascertain what kind of assistance might be required.

Review of implementation of the Convention in States parties whose reports are overdue

Second, third and fourth periodic reports of Somalia (CERD/C/88/Add.6)

56. Mr. ABOUL-NASR, country rapporteur, said he understood a letter had been received from the Permanent Mission of Somalia requesting that, in view of the country's current situation, consideration of its overdue report should be postponed until the Committee's next session. The letter had stated that the Somali Government would submit the report to the Committee as soon as the situation normalized.

57. The CHAIRMAN pointed out that the Committee had decided not to accede to the request of Somalia, in view of the fact that it had not given any definite date for submission of the report.

58. Mr. ABOUL-NASR said that he had not been present at the meeting in question. In the past, however, the Committee had always granted requests for postponement. The reasons for the Somali request were sound, given the chaos that currently prevailed in the country. It was not clear to him what exactly the Committee could discuss and what recommendations it could make, since there was no government in control to which they could be addressed. Furthermore, the situation in the country was not directly relevant to the Committee's work. The people of Somalia constituted a homogeneous group, spoke the same language and were of the same religion. The war being waged in the country was not the result of tribal differences, but was a conflict between two members of the same family.

59. Mr. LAMPTEY said he was in favour of accepting the request for postponement. In the unsettled conditions, it was not possible for Somalia to submit a periodic report or to give a date for the submission of such a report. The Committee needed only to express its regret at the situation.

60. Mr. SHAHI agreed that it was impossible for Somalia to provide a date for the submission of its report, but regretted that the request for postponement had not been made to the Committee by a representative of the country in person.

61. Mr. GARVALOV said that the Committee needed to adopt a position of principle and discuss what recommendations it wished to include in its report.

62. Mr. WOLFRUM said that human rights were being violated in Somalia and the Committee therefore had a duty to discuss the situation and make recommendations. He suggested that the Committee should express its regret at events in Somalia and urge the Security Council to take further action.

63. Mr. BANTON agreed that even if firm conclusions could not be reached, the topic needed to be discussed, so that the Committee could establish whether any recommendations could be made. In view of the provisions of article 1, paragraph 1, of the Convention, which referred to discrimination based on descent, the conflict in Somalia was not completely irrelevant to the Committee's work.

64. Mr. de GOUTTES pointed out that it was not the first time that the Committee had had to deal with such a situation; there were precedents, for instance, Haiti. The discussion that had just taken place needed to be reflected in the Committee's report, which should state that the Committee was alarmed at the massacre of the civilian population in Somalia and condemned such inter-clan, inter-tribe conflicts. The ethnic element that he believed was involved in the conflict meant that Somalia was a relevant topic of discussion for the Committee.

65. Mr. FERRERO COSTA agreed that the Committee should consent to postpone consideration of Somalia's periodic report and should express its concern at the situation in the country, on which it needed to express an opinion, since there was an ethnic, even a tribal aspect to the conflict.

66. Mr. ABOUL-NASR suggested that the Committee's report should state that the Permanent Mission of Somalia had requested postponement of consideration of the country's report, that the Committee had accepted the request in view of the situation in Somalia, and that the Committee was concerned about the events taking place there.

67. Mr. LAMPTEY said that, under the Convention, the Committee was concerned with the fulfilment of the responsibilities of States. It was not its task to find a solution to conflicts between groups, ethnic or otherwise. Since there was no firm State authority in Somalia, he wondered who would be in a position to submit a report to the Committee. He accepted Mr. Aboul-Nasr's suggestion regarding the Committee's report.

68. Mr. SHAHI suggested that a small group of members should draw up recommendations and observations for consideration by the Committee at a later stage.

69. Mr. WOLFRUM supported that suggestion.

70. The CHAIRMAN proposed that Mr. Aboul-Nasr, Mr. Banton, Mr. Wolfrum and Mr. Ferrero Costa should cooperate in drafting a text.

71. He assumed that the request made by Somalia for consideration of its report to be postponed until the next session was accepted.

It was so agreed.

The meeting rose at 1 p.m.

CERD/C/SR.949
22 September 1992

ENGLISH
Original: FRENCH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-first session

SUMMARY RECORD OF THE 949th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 10 August 1992, at 3 p.m.

Chairman: Mrs. SADIQ ALI

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7) (continued)

Review of implementation of the Convention in States parties whose reports are overdue (continued)

Second, third and fourth periodic reports of Somalia (CERD/C/88/Add.6) (concluded)

1. Mr. BANTON read out a proposed text on Somalia drafted in consultation with other members of the Committee:

> "1. The Committee took note of the request by the Mission of Somalia to the United Nations Office at Geneva to defer consideration of the report of Somalia until the situation in that country had clarified.
>
> 2. After hearing from its country rapporteur about the situation in that country, and debating the issue, the Committee decided to defer for one year its consideration of the implementation of the Convention in Somalia.
>
> 3. The Committee expressed its concern about the tragic circumstances prevailing in Somalia, which include conflicts based on descent, as described in the reports of the Security Council and the Secretary-General.
>
> 4. The Committee trusts that other competent organs of the United Nations, and particularly the Security Council, would do everything possible to bring to an end the violation of human rights in Somalia."

2. He thought that the text, with the possible exception of the phrase "which include conflicts based on descent" in paragraph 3, could be adopted by consensus.

3. Mr. WOLFRUM said he did not have sufficient information on the situation to enable him to accept the inclusion of the phrase "based on descent".

4. Mr. de GOUTTES said that he was in favour of the inclusion of those words, which established a clearer link with the Committee's terms of reference.

5. After consulting Mr. Aboul-Nasr, Mr. BANTON read out paragraphs 3 and 4 of the text, as slightly amended, to read:

> "3. Taking account of the report of the Secretary-General to the Security Council (S/24343), the Committee expressed its concern about the tragic circumstances prevailing in Somalia, which include conflicts based on descent.
>
> 4. The Committee trusts that the Security Council and other competent organs of the United Nations, in cooperation with regional

and non-governmental organizations, will continue to do everything possible to bring to an end the violation of human rights in Somalia."

The text on Somalia, as revised, was adopted by consensus.

6. Mr. ABOUL-NASR said it was very important to refer to the efforts of regional and non-governmental organizations, and he wished to pay special tribute to the Red Cross in that regard.

Sixth periodic report of Lesotho (CERD/C/90/Add.2)

7. Mr. AHMADU, country rapporteur, briefly summarized the principal features of Lesotho and recapitulated the country's situation with regard to its obligation to submit reports to the Committee. While showing understanding of the troubled political situation in Lesotho, the Committee should express its regret that the country had not complied with its reporting obligations, and should remind it that the United Nations could provide States with technical assistance in that connection.

8. In view of the development of events in southern Africa and of the political changes that had occurred in Lesotho itself, it would be particularly desirable that the Committee be informed of the current situation. Lesotho should be requested to study the new reporting guidelines, and to indicate the laws, regulations and practices by which it implemented the provisions of the Convention. It would be useful if the next report of Lesotho were to contain information on the human rights aspects of the draft Constitution which had been approved by the country in 1991. It would also be helpful to know whether any legislation contrary to the provisions of the Convention had been amended or repealed.

9. Since there were no further comments, the CHAIRMAN suggested that Mr. Ahmadu should draft the Committee's concluding observations on the case of Lesotho.

10. Mr. ABOUL-NASR said he thought it would be better to entrust the drafting of the concluding observations to the Rapporteur, with a view to ensuring a certain degree of harmonization among the various countries.

11. The CHAIRMAN suggested that Mr. Ahmadu should prepare some draft concluding observations on Lesotho and transmit them to Mr. Banton.

12. Mr. van BOVEN said he agreed that the Committee should endeavour to bring its concluding observations more into line with one another and suggested that it might base itself initially on the relevant criteria defined by the Committee on Economic, Social and Cultural Rights, pending the establishment of its own criteria.

13. Mr. WOLFRUM said he would prefer the Human Rights Committee approach. The Committee should take up the matter at the beginning of its next session.

14. Mr. BANTON said he was prepared to go through the various draft concluding observations after the current session and study any discrepancies they might contain, with a view to making suggestions at the Committee's next

session as to how those observations might be harmonized. It should be noted, however, that the Committee unfortunately had much less time to devote to the topic than the other bodies that had been mentioned.

15. Mr. SONG Shuhua said that that was an interesting suggestion. Since situations varied greatly from one country to another, it might perhaps be useful to establish a general framework that would nevertheless be flexible enough to enable the differences to be brought out.

16. Mr. DIACONU said he would like to raise the question of sources of information. It was not for the Committee to establish what human rights violations had occurred in one country or another. It was not competent to do so, nor did it have any means of confirming its assertions. It should therefore base itself primarily on United Nations reports and, whenever it made use of other sources of information, it should cite those sources.

17. Mr. de GOUTTES said that Mr. Banton was already, to some extent, harmonizing the concluding observations by suggesting certain changes to the drafts put forward by the various country rapporteurs. As far as sources of information were concerned, the Committee should indeed make primary use of United Nations sources; however, as an independent organ, it should not exclude other sources, although it must identify them as far as possible. In that connection, he reminded the Committee of the recommendation on the subject it had adopted in 1991.

18. Mr. FERRERO COSTA urged the Committee to keep to the agenda item under discussion. While the topics raised were extremely interesting, they had already been discussed, and although the Committee might return to them at a later stage, it did not have time to dwell on them for the moment. The Rapporteur could be relied on to bring the draft concluding observations into line as far as possible.

19. Mr. SHAHI said that it was the substance and not the form that was important. The Committee's chief task was to reach agreement on its conclusions; the rest could be left to the Rapporteur.

20. Mr. DIACONU said he was not disputing the fact that members of the Committee should have access to all available information. The problem was how to deal with such information in their conclusions, since it could not be presented as the Committee's own findings.

21. Mr. LAMPTEY said he failed to understand the reasons for the discussion in progress. The purpose of the concluding observations was to present the general view of the Committee. Those observations could well be harmonized, but there was no need at all to indicate the sources of information used. If the concluding observations were too detailed, there was a danger that no consensus could ever be reached.

22. Mr. WOLFRUM, on a point of order, requested that the meeting return to the item under consideration.

23. Mr. ABOUL-NASR said that the way the Committee's concluding observations were formulated was a matter of great importance. If necessary, the Committee should return to it after the item under consideration.

24. Mr. BANTON said that, in his view, it would be better if each country rapporteur were to circulate his own draft concluding observations, and if the members of the Committee then indicated any objections they might have. The rapporteur in question could then take them into account with a view to arriving at a consensus.

25. Mr. ABOUL-NASR said that it would be difficult for members of the Committee to submit all their objections to the country rapporteur so that he could take due account of them in his concluding observations. For instance, he himself was unable to accept most of the concluding observations submitted with regard to the report of Bangladesh.

26. The CHAIRMAN recalled that a point of order had been raised, and she was therefore obliged to decide upon it in accordance with rule 38 of the Committee's rules of procedure. She suggested that, as Mr. Wolfrum had proposed, the Committee should return to the item under consideration, and that the matter of the formulation of the Committee's concluding observations be taken up, if necessary, at a later stage.

It was so decided.

Second periodic report of Cape Verde (CERD/86/Add.4)

27. Mr. LAMPTEY, country rapporteur, reminded the Committee that it had taken the view that the initial report of Cape Verde (CERD/C/61/Add.5) did not altogether come up to expectations. The second report had been submitted in 1983, but there again the Committee had noted a number of shortcomings, and had asked for further information on the enjoyment of the rights provided for under articles 3 and 5 of the Convention, as well as for details of any cases of racial discimination that had been brought before the courts and on the action taken by the Government in connection with article 7.

28. Cape Verde was a peace-loving State, which was of interest both on account of its racial mix and its democratic experience. That made it all the more desirable that it should share that experience with the international community, notably by submitting the reports required of it under the Convention.

29. The CHAIRMAN noted that the members of the Committee had no questions to ask with regard to the situation of Cape Verde.

30. Mr. LAMPTEY, country rapporteur, submitted the following concluding observations:

> "In the absence of the due reports from Cape Verde, the Committee decided to review the situation in that country on the basis of the second periodic report submitted in 1983. The Committee took the view that Cape Verde had not responded to questions and comments of Committee members raised during consideration of both the initial and second reports. It was regretted that Cape Verde, with its democratic traditions, had failed to fulfil its reporting obligations under the Convention. It was the hope of the Committee that Cape Verde would submit the due report as soon as possible and, in so doing, would take

into account the consideration given to the matter by the Committee and would follow the guidelines on reporting that the Committee had adopted."

31. Mr. BANTON said he would like the first paragraph of his proposed text regarding countries whose reports were overdue, in which reference was made specifically to technical assistance by the Centre for Human Rights, to be added to the text just read out by Mr. Lamptey.

32. Mr. LAMPTEY, country rapporteur, said he was not sure whether Cape Verde needed technical assistance, since it had never asked for any. However, he had no objections to the insertion of the proposed paragraph.

33. Mr. AHMADU said that most of the African countries whose reports were overdue were in a situation characterized by constitutional changes. That was, for instance, the case in Liberia and in Burkina Faso. It might well be that the new authorities were not even aware of the fact that their predecessors had failed to submit a report on time. The Committee should show understanding in that regard.

34. The CHAIRMAN said that, if she heard no objections, she would take it that the Committee wished to adopt Mr. Lamptey's draft concluding observations, as supplemented by Mr. Banton, and that consideration of the situation in Cape Verde was thus completed.

It was so decided.

Initial report of St. Vincent and the Grenadines (CERD/C/85/Add.1)

35. Mr. BANTON, country rapporteur, said that St. Vincent and the Grenadines was a country situated in the Caribbean which had a territory of less than 390 square kilometres, and was thus only slightly larger than the canton of Geneva. In 1980, its population had been 97,845, 82 per cent of whom had been black and 14 per cent of mixed race, with small white, Asian and Amerindian minorities. In fact, those distinctions were often blurred. Thus, among the Amerindians, some counted themselves as Caribs, while others were regarded as black Caribs or yellow Caribs. The terms Island Caribs and Red Caribs were also used. Afro-Americans and Caribs looked down on one another, as did Caribs and "poor whites". The relations between East Indians and Caribs were more harmonious. Ethnic tensions were greater when they coincided with opposing political views.

36. The initial report, submitted in 1983, asserted that there was no discrimination in the country, and that citizens were protected from it by the basic clauses of the Constitution. The Committee had then drawn the State party's attention to the technical assistance that could be provided by the United Nations. St. Vincent and the Grenadines should thus be asked, at very least, to furnish the text of the clauses of the Constitution referred to. It should also be asked to specify what would happen in the event of a racial conflict between a visitor and a citizen. The State party should also be reminded that racial discrimination was not practised solely by whites against blacks, and that members of any population group might become its victims. Persons of Asian descent in the country were largely concentrated in

the lower strata of the population, and Caribs believed that blacks sometimes had a discriminatory attitude towards them. St. Vincent and the Grenadines should reflect further on its obligations under the Convention.

37. The CHAIRMAN, noting that the members of the Committee had no questions to put, said that, if she heard no objections, she would take it that the Committee wished to adopt Mr. Banton's draft concluding observations, and that consideration of the situation of St. Vincent and the Grenadines was thus completed.

It was so decided.

Second periodic report of El Salvador (CERD/C/86/Add.3)

38. Mr. WOLFRUM, country rapporteur, recalled that, in its second periodic report, El Salvador had devoted paragraphs 5 to 16 (out of a total of 25) to the question of apartheid, stating that it recognized the Namibian people and its representative, the South West Africa People's Organization (SWAPO), and that it had no direct economic relations with South Africa. The report further stated that El Salvador had adopted legislative measures to combat all forms of racial discrimination, and referred to article 150 of the Constitution, guaranteeing the equality of all persons before the law, as well as to article 191, recognizing the right of association and the right of workers to organize "without distinction as to nationality, race, creed or political ideas". The report also stated that those constitutional guarantees were reflected in the criminal law and in the Code of Penal Procedure. Lastly, it indicated that the international instruments to which El Salvador was a party were incorporated, once ratified, into domestic law.

39. Members of the Committee had criticized the report on several counts. Mr. Partsch had pointed out that the report did not mention how article 2 of the Convention was implemented, and did not refer to article 6. He had also regretted that no mention had been made of El Salvador's ethnic minorities. Mr. Oberg had regretted that the report limited itself to references to the Constitution. Mrs. Sadiq Ali had called for further information on the demographic composition of the population, and on measures adopted to improve the situation of minority groups which might justifiably consider themselves disadvantaged. Mr. Cicanovic had regretted the lack of information on implementation of article 5 of the Convention. Lastly, Mr. Shahi had deplored the fact that no detailed description was given of the measures to combat racial discrimination referred to in paragraphs 8 and 17 of the report.

40. According to the report by the Special Rapporteur of the Commission on Human Rights (E/CN.4/1991/34), summary executions, abductions and disappearances had continued to occur in El Salvador during 1990. An Agreement on Human Rights had been signed between the Government and FMLN at San José, Costa Rica, on 26 July 1990, which essentially confirmed the rights set out in the instruments of the United Nations and of the Organization of American States to which El Salvador was a party and in the country's Constitution. It was interesting to note that the preamble to the Agreement stated that FMLN had the capacity and the will to guarantee respect for the inherent attributes of the human person. Both parties undertook to respect the most elementary rights of the individual. A very significant feature of the Agreement was the establishment of an international verification procedure

under the auspices of the United Nations mission, whose director was to be designated by the Secretary-General. In accordance with that Agreement, the armed forces had established various procedures governing arrests and the rights of detainees; under those procedures, an individual could be arrested without a warrant only in flagrante delicto. In July 1990, the armed forces general staff had established an office to handle complaints of human rights violations.

41. Since the signing of the Agreement, human rights violations had been fewer in number, but had not ceased. In 1990, 63 people had been executed by death squads and 42 by the army, while 15 peasants had been murdered in the El Zapote district during the night of 21 to 22 January 1991. In addition, the military authorities were creating obstacles to the repatriation of Salvadorian refugees, especially from Honduras.

42. In conclusion, he pointed out that the Salvadorian judicial system seemed to lack either the will or the means to bring an end to such grave and persistent human rights violations. Little progress had been made in important investigations, such as that concerning the Jesuits murdered on 16 November 1989. It was to be hoped that the peace agreement of 25 September 1991 would bring about an improvement in the situation.

43. Mr. TIKHONOV (Secretary of the Committee) read out a note verbale from the Permanent Mission of El Salvador in Geneva, in which the Permanent Representative of El Salvador stated that it had unfortunately not been possible to present his country's report on schedule, but that it would be submitted in a month's time, and requested the Committee to be kind enough to consider it at its next session.

44. Mr. YUTZIS proposed that, in the light of the note verbale, consideration of the situation in El Salvador should be postponed.

45. Mr. WOLFRUM, country rapporteur, said he agreed with that proposal, but asked the Committee to take note of the statement he had made.

46. Mr. FERRERO COSTA said that, while he too agreed that El Salvador's request should be granted, the Committee should ask that country to submit a comprehensive report, containing up-to-date information.

47. The CHAIRMAN suggested that, with due regard for the statement by Mr. Wolfrum and the comments that had just been made, the Committee should defer consideration of the situation in El Salvador, as requested by the Permanent Representative of that country.

It was so decided.

48. Mr. de GOUTTES recalled that the Committee had found itself in a similar situation in the case of Viet Nam. It was true that the Government of Viet Nam had sent a delegation but it, too, had requested a last-minute postponement. The members of the Committee had agreed to await the next written report of Viet Nam, while proceeding to a preliminary exchange of views and asking a number of questions to which Viet Nam could reply when submitting that report.

49. As for El Salvador, a country which had experienced civil war and its accompanying violence, the situation showed some encouraging signs which could well be decisive for the future. It was thus essential that the Salvadorian Government should furnish information on the cease-fire agreement concluded on 31 December 1991, on the constitutional and legal reforms adopted by the Legislative Assembly in 1991, including the appointment of a procurator for human rights, on the reforms adopted in the army and the police force, on the activities of the fact-finding commission set up to investigate the very serious acts of violence committed by the Government towards FMLN, and lastly on the report of the Human Rights Division of the United Nations Observer Mission in El Salvador (ONUSAL), set up in 1991.

50. The CHAIRMAN pointed out that the case of Viet Nam was different in that the Vietnamese delegation had invited the members of the Committee to ask questions. As for El Salvador, the Committee had just decided to defer consideration of the situation in that country.

51. Mr. YUTZIS asked whether Mr. de Gouttes' questions would be transmitted to the Salvadorian Government.

52. Mr. FERRERO COSTA suggested that the Salvadorian Government should be told that the Committee had agreed to defer consideration of the situation in its country, and that the summary record of the meeting at which the Committee had begun to deal with the matter should be forwarded to it, so that it could reply in its next report to the questions asked.

53. The CHAIRMAN said that the summary record of the meeting would be sent to the Salvadorian Government.

54. Mr. ABOUL-NASR said he thought that the summary records of meetings should be sent to all countries that requested them.

55. Mr. GARVALOV said that it was undoubtedly the last time that he would reluctantly agree to such a postponement of consideration of the situation in a country.

Initial report of Papua New Guinea (CERD/C/101/Add.4)

56. Mr. WOLFRUM, country rapporteur, said that the initial report of Papua New Guinea, submitted in 1983, had been very comprehensive, and prepared in accordance with the Committee's guidelines. It was unclear why the Government of that country had not continued to fulfil its international obligations in the matter.

57. Part I of the initial report stated that Papua New Guinea was a multiracial and non-discriminatory society and, in introducing the document, the country's representative had informed the Committee that there were 3 million inhabitants in Papua New Guinea speaking more than 750 languages and dialects, many of which were mutually incomprehensible. In its report, the Government had laid great emphasis on the country's Constitution and legal system. Articles 32 to 58 of the Constitution enshrined the basic principles of the Convention, and guaranteed the other fundamental human rights. Article 217 established an Ombudsman Commission whose task was to investigate complaints of discrimination lodged by individuals against public authorities

or private companies. If it was found that the rights of an individual had not been respected, the Commission could help to bring the case before a court for remedial action. Article 55, paragraph 2, of the Constitution provided for the development and protection of certain racial groups or individuals, but no specific measure to that effect had been adopted at the time of the submission of the report. Likewise, the Government of Papua New Guinea had not adopted any specific legislative measures to stop the sponsoring, defending or supporting of racial discrimination by any persons or organizations within the country, because it was not aware of the occurrence of such practices within the country. Moreover, it had entered a reservation with regard to article 4 of the Convention, which it interpreted as requiring a party to the Convention to adopt further legislative measures in the areas covered by subparagraphs (a), (b) and (c) of the article only to the extent that it considered that some legislative addition to or variation of existing law and practice was necessary to give effect to the provisions of article 4.

58. Both the Constitution and the Discriminatory Practices Act prohibited any form of racial discrimination. Acts of discrimination were regarded as offences, whose perpetrators would be liable to prosecution.

59. The members of the Committee had deemed the report satisfactory, but had pointed out that the purpose of the Convention was not only to eliminate racial discrimination, but also to prevent its emergence. Some members had asked for information on the demographic composition of the country, and whether Papua New Guinea might not withdraw the reservation it had entered regarding article 4 of the Convention.

60. The Constitution of Papua New Guinea did not seem to have changed significantly since the last report was submitted, but the current human rights situation gave reason for concern. On Bougainville, government forces faced opposition from the Bougainville Revolutionary Army (BRA), which was seeking additional compensation for land occupied by the mining company Bougainville Copper Ltd. and for the damage to the environment. In 1989, the BRA had begun to fight for the independence of Bougainville and had committed acts of violence, notably against civilians suspected of informing the Government about its activities. The security forces had retaliated in kind against BRA sympathizers. On 17 May 1990, the leader of the BRA had declared the independence of Bougainville and the Revolutionary Army had appeared to be in control of the island. On 5 August 1990, however, the BRA and the Government had concluded an agreement.

61. He proposed that the Committee should recommend to the Government of Papua New Guinea that it resume its dialogue with the Committee, give an account of the legal situation in the country, and provide information on any negative repercussions that mining activities might have on the populations living in certain regions.

62. Mr. van BOVEN recalled that, in the course of its consideration of the situation in the former Yugoslavia, the Committee had given some thought to the role it might play with regard to prevention. In the face of a situation as explosive as that existing on Bougainville, he wondered whether the Committee should not request the Government of Papua New Guinea, under article 9, paragraph 1, of the Convention, to submit a report on the situation on Bougainville.

63. Mr. ABOUL-NASR supported that suggestion.

64. The CHAIRMAN said that, if she heard no objections, she would take it that the Committee wished to send a letter to the Government of Papua New Guinea requesting it, under article 9, paragraph 1, of the Convention, to send it information with regard to the situation on Bougainville.

It was so decided.

Initial report of the Solomon Islands (CERD/C/101/Add.1)

65. Mr. LECHUGA HEVIA, country rapporteur, said that the Government of the Solomon Islands had not submitted a report for nine years, and had not replied to the questions asked during the consideration of its initial report (CERD/C/101/Add.1), in which it had basically confined itself to paraphrasing the country's Constitution. As a result, it was difficult to assess the extent to which the Convention was being implemented in that country.

66. He reminded the Committee that, in its initial report, the Government had asserted that it had no reason to give effect to articles 2 to 7 of the Convention because the Constitution provided sufficient guarantees of the enjoyment of individual rights and freedoms. Accordingly, the Convention could have only a complementary role *vis-à-vis* the Constitution. In reply to those assertions, the Committee had reminded the Government of the Solomon Islands that international law had priority over national legislation, and that a State which had freely ratified an international instrument had a duty to honour the obligations it had thus assumed.

67. According to the report, the question of protection against racial discrimination was covered by chapter II, article 15, of the Constitution, which provided that no law should contain any provision that was discriminatory either in itself or in its effects, that no one should be treated in a discriminatory fashion by anyone acting in accordance with a written law or in the performance of public duties or services, and that no one should be subject to discrimination with regard to access to public places. However, the Government did not specify whether discrimination was also prohibited with regard to access to non-public places, such as private clubs. Article 15 of the Constitution also provided for derogations under which laws could be enacted notwithstanding the general protection against discrimination guaranteed by that same article, for example for the collection of taxes and allocation of State revenues, or by any provincial administration for local purposes. The Committee had then pointed out to the Government that, if members of a particular racial group could be made subject to taxation by virtue of their membership of that group, it constituted an act of discrimination. In addition, the Committee had wondered whether article 15 of the Constitution in fact implemented article 4 of the Convention, and had asked for further details on the matter.

68. The initial report of the Government of the Solomon Islands contained data on the demographic composition of the population (1976 Census), but it would have been interesting to have information on the religious and cultural characteristics of each ethnic group, its standard of living and socio-economic and educational levels, and, in particular, on employment and

infant mortality rates, so that comparisons could be made between the different groups. According to information later than that of the 1976 Census, 60 per cent of the population was under 20 years of age, and only 50 to 60 per cent of the people could read and write. Education was not compulsory, and most schools were fee-paying. In 1986, there had been 47,949 pupils and 1,788 teachers in 461 primary schools and 5,553 pupils and 276 teachers in secondary schools. The official language was English (and what was termed "pidgin English"), but 37 other languages and dialects existed. There was also a great variety of religious beliefs. According to the 1976 Census, about 34 per cent of the population belonged to the Church of Melanesia (Anglican Church), 19 per cent to the Roman Catholic Church, 17 per cent to the South Sea Evangelical Church, 11 per cent to the United Church and 10 per cent to the Seventh-Day Adventist Church.

69. At the time of the submission of the report, no complaint of racial discrimination had been lodged with the Supreme Court, but it was not known if there had been any subsequently. The Committee did not know either whether any ethnic groups had been victims of acts of discrimination on religious grounds or in educational matters. It would also have been helpful to have information on the employment situation. According to 1985 data, the active wage-earning population had then been 23,300 persons, 34 per cent of whom worked in the government service, 33.2 per cent in agriculture and 29.5 per cent in the services sector. He pointed out that the larger islands of the archipelago were inhabited by Melanesians, whereas the small coral islands, which were difficult to cultivate, were inhabited by Polynesians: it might be that the latter were economically disadvantaged as a result.

70. Communications in the archipelago were inadequate, which made detection of any cases of racial or religious discrimination more difficult: the Committee had been unable to establish whether any discriminatory colonial legislation still existed. In 1988, a commission had been set up to revise the Constitution with a view to enabling the archipelago to become a federal republic within the Commonwealth, but the Committee did not know whether any further amendments were contemplated.

71. He suggested that the Committee should remind the Government of the Solomon Islands of its reporting obligations, and offer it the technical assistance needed for the preparation of its next report.

72. Mr. FERRERO COSTA said he endorsed that proposal. The Committee should send a letter to the Government informing it that the situation of the Solomon Islands had been considered, reminding it of its obligations under article 9, paragraph 1, of the Convention and proposing that it avail itself of the technical assistance services of the Centre for Human Rights in preparing its reports. The relevant summary records containing the comments and conclusions of the Committee would be attached. The letter might then serve as a basis for a standard letter to be sent to all States whose reports were overdue.

73. The CHAIRMAN drew the attention of members to the letter sent by the Chairman of the Committee on 23 August 1991 to the ministers for foreign affairs of a number of States parties whose reports were overdue, and whose situation had been considered on the basis of the most recent reports

available. The text of that letter was to be found in annex VII to the Committee's report on its thirty-ninth and fortieth sessions (A/46/18). She suggested that the text of that letter should be used again for States parties in the same position whose situation had been considered at the current session.

It was so decided.

Third, fourth and fifth periodic reports of Botswana (CERD/C/105/Add.1)

74. Mr. BANTON, country rapporteur, said he had circulated a note giving demographic data on Botswana and outlining the situation with regard to the country's earlier reports.

75. With regard to article 2, paragraph 1 (e), of the Convention, it might be of interest to know whether there were any integrationist multiracial organizations or non-governmental human rights organizations promoting racial equality in the country. The Committee should also see whether legislation was in keeping with article 5 of the Convention, and ask for clarification of the enigmatic allusion to article 5, paragraph (d) (ii), of the Convention appearing in paragraph 28 of the report (CERD/C/105/Add.1). With regard to article 6, it was stated in paragraph 31 of that report that the High Court was competent to redress complaints. However, it was generally expensive to appeal to an instance of that kind which, consequently, might not constitute an effective remedy. Lastly, the next report might usefully contain some estimate, if only a subjective one, of the number of acts of discrimination of a racial character in various social sectors, as well as an indication of how often victims of such acts had obtained redress.

76. The CHAIRMAN, speaking as a member of the Committee, said she had a number of questions to ask. First of all, in connection with the Central Kalahari Game Reserve established in 1963, she would like to know whether there were any projects in Botswana catering specifically to the needs of the San people, formerly known as Bushmen, who roamed in small groups in inhospitable regions and who, according to the most recent estimates, appeared to number no more than 800 people. She wondered how many accommodation centres had been set up for them, how many agriculture schemes had been launched and how the Remote Area Development Programme was progressing.

77. With respect to article 5 of the Convention, it would appear that cases of ill-treatment of detainees continued to occur; three policemen had been given prison sentences in 1990 for torturing a suspect: she would like to know whether any steps had been taken to sensitize the police to such problems. Botswana had a long tradition of peaceful assemblies in the villages, known as the Kgotla: she wondered whether, in those assemblies, the old patriarchal system, which discouraged women from taking part in political life, was still in force. At the Kgotla, anyone was free to question the chiefs and voice his opinions, and she would like to know how that system was incorporated into the current political set-up, and whether it was used by the democratic parties.

78. Still with regard to article 5, she would like to know how many refugees had settled in the Dukwe camps, which countries they came from, and what education, health and employment facilities they had been offered. Botswana

had made considerable economic progress since 1989; its GNP had grown by nearly 9 per cent annually and, since its independence in 1966, its per capita GNP had increased from $69 to almost $2,000 in 1989. Those figures were statistically illusory, however, since some 75 per cent of the inhabitants of Botswana lived in rural areas and survived by subsistence farming and animal husbandry. She inquired what was being done to reduce the resulting disparities, in view of the fact that the major part of the country's capital went to South Africa. In addition, there had been complaints that the Government had refused to allow teaching in minority languages, which would appear incompatible with article 5, paragraph (e) (v), of the Convention. Lastly, the law severely restricted the right to strike; once a strike had been declared illegal by the Government, the employer had the right to dismiss the strikers, who could also be jailed. There would seem to be a clear need to reform the labour laws, and she wondered whether any initiatives had been taken in that connection.

79. With regard to article 6 of the Convention, it would appear that there was a system of bail, and that a detainee had the right to hire an attorney of his choice, but no legal aid was provided for the poor, who were often tried without the benefit of counsel. She wondered whether there were any plans to remedy that situation. The customary courts, open only to members of the tribe, usually handled property or matrimonial questions. It was the tribal chief who presided over the court, and parties were not assisted by counsel. She would like to know whether, if land and property disputes were not settled to the satisfaction of both parties, they were then referred to the High Court and what happened in the case of inter-ethnic marriages.

80. Lastly, she inquired whether the Botswana Association for Human Rights had yet been officially recognized and whether the Government had taken any steps to make education compulsory for a period of nine years, in accordance with its stated intention.

Third, fourth and fifth periodic reports of the Lao People's Democratic Republic (CERD/C/105/Add.4)

81. Mr. de GOUTTES, country rapporteur, recalled that the Lao People's Democratic Republic had acceded to the Convention in 1974 but had not made the declaration provided for under article 14. Subsequently, it had submitted its initial report and second report in 1978, and its third, fourth and fifth reports in 1984. Since that date, Laos had submitted no further reports despite being sent numerous reminders. The Committee should seek to establish the reasons for that failure to report, on the basis of earlier documents in its possession or other available information, and decide what questions it would like to ask the Lao Government.

82. The absence of a Lao delegation was unfortunate. It was true that the country had no Permanent Representative in Geneva and that, at the time its last report had been submitted, the Government had emphasized the difficulties encountered by the least developed countries in fulfilling their obligations, notably due to lack of competent staff. The Committee could accept that the country's very difficult situation, the aftermath of the war it had experienced, its internal problems and the various changes currently taking

place might explain, but not justify, the Government's delay in compiling its reports. In that connection, it could be offered technical assistance by the United Nations human rights advisory services.

83. When considering the last report of Laos, the Committee had welcomed the efforts made by that country to submit its periodic report which, it had noted, complied with the Committee's guidelines as to form, but confined itself to generalities in respect of substance. In particular, members had regretted the lack of adequate data on the demographic composition of the population and on the number of persons belonging to each of the 68 ethnic groups, the dogmatic assertion that racial discrimination was unknown in Laos, the absence at the time of any national constitution guaranteeing fundamental rights and freedoms, the fact that the Convention had not been incorporated into domestic law and the lack of any specific legal provisions to punish acts of racism; they had also noted that there were still some doubts regarding the effective remedies available to victims in the People's Courts and the steps taken by the Government to ensure the social, economic and cultural development of the ethnic minorities. The Committee had also wondered how the declared aim of building up a socialist and national culture in Laos could be reconciled with the recognized right of each ethnic group to preserve its own culture. Questions had also been asked about the existence of "re-education camps" and the regime governing such camps, as well as about the situation of aliens resident in Laos.

84. In the absence of a new report, the Committee should first ask the Lao Government to send it, within as short a time as possible, an updated periodic report which would conform to the guidelines in terms of both form and content. That document should contain recent information on the country's social, economic and demographic indicators, since all the Committee knew was that the population amounted to 4.2 million inhabitants and that the rate of inflation, which had reached 70 per cent in 1989, had fallen to 10 per cent in 1991 and, probably, to 7 per cent in 1992. Nothing was known about the composition of the population by ethnic groups, the rate of population growth, the literacy rate, etc., although such data should have been available to the Government following the first census carried out less than 10 years previously.

85. The report should then outline the main developments in the Lao political regime and describe the efforts being made to democratize the country. It was known that, from 1986 onwards, the Government had taken the path of political and economic reform; however, those reforms would appear to have been carried out rather unevenly, rapidly as far as the transition to a market economy was concerned but more hesitantly in the political sphere, where the real power was still in the hands of the single - Communist - party. Nevertheless, the reform policy had been a genuine one, and there had been a number of very encouraging developments: the holding of regional and general elections in 1969 (in which independent candidates had been allowed to stand), the release of a number of prominent figures of the former regime, the establishment of a State subject to the rule of law following the adoption of a number of basic acts in respect of criminal and civil law and the judiciary and, lastly, the adoption of a new Constitution in 1991 which had abolished direct one-party control, guaranteed fundamental freedoms, recognized private property and strengthened the role of the National Assembly and the Government. The next periodic report should confirm and add to that

information, and also explain the legal content of the new 1991 Constitution and how far it affected the applicability of the Convention in domestic law, indicating whether the latter could be applied directly by the courts. The Committee also wished to know whether there were any bodies responsible for developing policies to benefit the ethnic groups.

86. As far as part II of the due report was concerned, Laos should give an account, in connection with article 2 of the Convention, of any measures adopted to guarantee the development of ethnic minorities; according to some reports, the largest of those minorities, the Hmong (Meo) community, consisting of some 200,000 persons, was regarded with great suspicion by the authorities because it was still largely hostile to the Communist regime; it would appear that, after having fought on the side of the Americans, the Hmongs had joined forces with various activist elements which had been pursuing an anti-government campaign since 1975. Those tribes also complained that the army was gradually driving them out of the border zones in which they had taken refuge, on the grounds that they constituted an obstacle to the improvement of relations between Laos and Thailand: it was essential to have information from the Lao Government on that point.

87. In connection with articles 4 and 6 of the Convention, the report should contain a complete account of the texts punishing all acts of racism and should give details of the remedies available to victims in the courts, mentioning whether those remedies were still within the competence of the People's Courts and stating how many complaints and sentences had been recorded.

88. With regard to article 5 of the Convention, the Committee would need data on the number of persons still interned in "re-education camps", notably in the north-eastern provinces, notwithstanding the large number that had been freed in recent years. Information would also be needed on the situation of refugees who had left Laos for Thailand; at a meeting in Luang Prabang in June 1991, representatives of Laos, Thailand and the Office of the United Nations High Commissioner for Refugees had reportedly agreed on a plan to repatriate to Laos, or to settle in a third country, the 62,000 Lao refugees living in camps in Thailand; the repatriation operation was to be completed towards the end of 1994. When the refugees, notably the Hmongs, had expressed fears of possible reprisals on their return, the Lao delegation had apparently given assurances that the safety and dignity of the returnees would be guaranteed; it would be helpful to have information on the implementation of that repatriation plan. It would also be useful to know what restrictions were still in force with regard to freedom of movement within Laos, and freedom to leave the country or to return to it. Similarly, according to some reports, the political authorities would still appear to be keeping Buddhist and Catholic priests under strict surveillance and the Committee Would like to know what the true situation was.

89. Lastly, with regard to the implementation of article 7 of the Convention, he inquired whether measures had been adopted in Laos to publish the Convention and make it more widely known, and to disseminate information on the campaign against racial prejudice and the defence of human rights, and whether the Government authorized and encouraged action by non-governmental organizations to uphold human rights and combat racial discrimination.

90. In conclusion, he believed that the Committee, while deploring the accumulated delays in the submission of reports, and the absence of any delegation from the country concerned at its current session, should take into account the difficult situation of Laos and its efforts to achieve a more liberal and open society, and should encourage it in the new path it had taken. It could also invite the country to avail itself of the United Nations human rights advisory services for assistance in preparing its due report.

91. Mr. WOLFRUM, referring to the new 1991 Constitution of Laos, said he would like the country's next report to describe how the Constitution was being put into effect, since its implementation appeared to pose certain problems. He, too, wished to draw attention to the situation of the Hmong minority, who for the reasons outlined by Mr. de Gouttes, would appear to be victims of discrimination.

92. The CHAIRMAN said that, if she heard no objections, she would take it that the Committee wished to adopt the recommendations that had just been formulated.

It was so decided.

Fourth and fifth periodic reports of Burkina Faso (CERD/C/105/Add.5)

93. Mr. AHMADU, country rapporteur, said that Burkina Faso had an area of 275,000 square kilometres, and had had in 1985 some 8 million inhabitants, nearly 50 per cent of whom were Mossi and 10 per cent Fulani. A profoundly democratic spirit had characterized Burkina Faso through a variety of political regimes; the people talked politics openly and knew how to voice their demands, while trade unions were strong.

94. Burkina Faso was engaged in a struggle for survival, and was making great efforts to build up its institutions. President Sankara, the young, dynamic, idealist and revolutionary head of State, had been assassinated in a *coup d'état* organized by his chief collaborator who had then, faced with a hostile population, been obliged to commit himself to restoring civilian rule. Taking off his uniform, he had stood as candidate for the presidency, and had won the election. That succession of internal difficulties explained why the Burkina Faso authorities had submitted no periodic report since 1985, although until then they had regularly fulfilled their obligations in that regard. The Committee should draw the Government's attention to the fact that it could obtain technical assistance from the United Nations in preparing its reports.

95. In 1985, the Government had replied to many of the questions put to it earlier; however, some appeared to remain unanswered, notably whether various laws were still in force, such as the ordinance of 1962 prohibiting all body marks serving to identify an individual's tribe or ethnic group. In any case, that law was not very significant, since all over Africa such practices were tending to disappear without any need for legislation. Since 1985, President Sankara had repealed a number of laws whose content was of direct concern to the Committee, and it would be useful to know what the current situation was following three successive Governments and three different constitutions. It would be also helpful to know whether there was any specific body to which victims of illegal administrative actions could appeal;

President Sankara had set up a post of mediator, but it was not known whether it still existed. Lastly, the question as to whether there were any tensions between the various population groups had still not received an answer.

96. For the Committee to assess the extent to which Burkina Faso was complying with the obligations assumed under the Convention, it needed up-to-date information on the current constitutional position. It had been stated in earlier reports that legislative provisions had been adopted to meet certain of the requirements of articles 2 to 7 of the Convention, but it was not clear whether those measures were in force and were being effectively implemented; Burkina Faso should supply information on the matter, and indicate how those provisions were being implemented. The Committee would also need to know whether political conflicts sometimes coincided with ethnic antagonisms.

97. The Committee should also ask to what extent the remedies listed in paragraphs 66 to 69 of the report (CERD/C/105/Add.5) were being effectively utilized, whether steps had been taken to set up health services and other social services with a view to reducing disparities, and whether certain regions inhabited by particular ethnic groups were disadvantaged in that regard.

98. Lastly, the Committee should ask for clarification of the policy, referred in paragraph 17 of the report, of combining together the different nationalities in Burkina Faso. It would be interesting to know how far that policy had been successful. The Ujamaa policy attempted in the United Republic of Tanzania had been a failure, and it would be particularly useful to know whether any similar steps had been taken in Burkina Faso, and what obstacles had been encountered. President Sankara had defined some priorities for promoting national unity, which his successor might have incorporated into the Constitution.

99. The Committee realized that in a country faced by such serious economic difficulties as those being experienced by Burkina Faso, it was difficult for the authorities to provide detailed answers to all the questions raised. It should indicate, therefore, that it would prefer to receive qualitative or even subjective replies rather than no replies at all.

100. He proposed that a further reminder be sent to the Government of Burkina Faso, together with the questions that had just been asked.

It was so decided.

ORGANIZATION OF WORK (continued)

101. Mr. de GOUTTES said he would like to return to the question of the Committee's contacts with the Sub-Commission on the Prevention of Discrimination and Protection of Minorities. It had been agreed, at the beginning of the session, that Mr. Valencia Rodríguez would approach the Chairman of the Sub-Commission, as a result of which it had been decided that he would make a brief statement to the Sub-Commission referring to the Committee's difficulties and to its future, mentioning the letter the Committee had just sent to the Chairman of the Commission on Human Rights.

It was urgently necessary to decide who was to replace Mr. Valencia Rodríguez at the meeting of the Sub-Commission. Mr. Ferrero Costa would, perhaps, agree to take on that responsibility.

102. In addition, the Committee would need to designate one of its members to attend the extraordinary session of the Commission on Human Rights which was to be held in a few days' time.

103. The CHAIRMAN said the Committee would take a decision on those questions at its next meeting.

The meeting rose at 6.10 p.m.

CERD/C/SR.950
13 August 1992

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-first session

SUMMARY RECORD OF THE 950th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 11 August 1992, at 10 a.m.

Chairman: Mr. AHMADU

The meeting was called to order at 10.40 a.m.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 9, PARAGRAPH 1, OF THE CONVENTION (agenda item 6)

Draft general recommendations

1. Mr. BANTON suggested that, in view of the limited time available, a small group be set up to attempt to reach a consensus on the draft general recommendations to be considered. The Committee had two options; either to adopt the recommendations without discussion or to postpone discussion until a later date.

2. The CHAIRMAN suggested establishing a working group consisting of four or five members.

3. After an exchange of views in which Mr. de GOUTTES, Mr. RECHETOV and Mr. ABOUL-NASR took part, the CHAIRMAN said he believed the majority opinion was that consideration of the draft general recommendations should be postponed until the next session, unless the Committee found time to discuss them before the end of the current session.

It was so agreed.

SECOND DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION (agenda item 10)

Draft statement by the Committee on draft model legislation to combat racial discrimination (CERD/C/1991/Misc.4)

4. The CHAIRMAN suggested that a working group should be set up to consider the draft model legislation. It might be composed of Mr. Rechetov, Mr. Wolfrum, Mr. Shahi, Mr. Ferrero Costa and Mr. Aboul-Nasr.

5. In reply to a question by Mr. LAMPTEY, Mr. TIKHONOV (Secretary of the Committee) said that the working group would make suggestions for improving the text on draft model legislation, which would then be discussed by the Committee. In the light of that discussion, the working group would prepare a final text for approval by the Committee.

6. Mr. BANTON reminded members that he had already circulated a text entitled "Draft statement on model legislation". The Committee would need to include in its report at least some indication of its views on the matter. Did members wish to await a report from the proposed working group before deciding what its response would be?

7. Mr. LAMPTEY did not see how the working group would have time to consider the matter and submit a paper which the Committee could reasonably be expected to discuss and adopt. The matter was a very important one, and only a few days of the session were left. He suggested that consideration of the question should be postponed until the next session: after all, it would not be the Committee's fault if action on the matter was delayed, since it had had no spring session, and the current session had been considerably shortened.

8. Mr. FERRERO COSTA said that, in his view, the working group should hold its first meeting as soon as possible. It could then decide for itself whether it had time to discuss the draft model legislation, or whether the matter should be deferred until the next session.

9. Mr. DIACONU pointed out that, as the body dealing with the subject of racial discrimination, the Committee would be expected to make a serious contribution to discussion of the draft model legislation proposed. He suggested that it should first be established whether or not the Committee's response on the draft legislation needed to be submitted that year. If that were so, the Committee would be obliged to make at least some comments, whether they were presented as the considered view of the Committee as a whole or simply as the opinions of individual members.

10. Mr. de GOUTTES said the proposed draft model legislation was an ambitious - perhaps over-ambitious - project. He urged that the working group should be allowed time to study it in depth, and to consider various solutions, possibly including the conversion of the draft legislation into a set of guidelines. It was important that all possible options should remain open.

11. Mr. WOLFRUM supported that suggestion, but pointed out that the draft model legislation had been considered at the previous session, and time might have been saved if the Secretariat had re-drafted the text on the basis of comments already made. Some members had expressed the view that the whole concept of model legislation, at least in the form presented, was not acceptable in that it laid too much emphasis on the criminal law approach. He would recommend that in drafting model legislation, at least some account should be taken of relevant human rights instruments. As it stood, several parts of the draft were in fact in contradiction with the Covenant on Civil and Political Rights.

12. Mr. SONG Shuhua said Mr. Diaconu's proposal merited consideration. If the Committee needed to have its response ready that year, it would have to postpone other work, but if the matter was less urgent, discussion could well be deferred until the next session.

13. Mr. ABOUL-NASR shared that view. The Committee ought not to take up work it would be unable to finish. All it could do was to state in its report that it had been prevented from giving the question the attention it deserved due to lack of time.

14. He was grateful to the Chairman for nominating him to represent Africa in the working group, but regretted that he could not accept, since he was not convinced that there was in fact any need for model legislation.

15. Mr. van BOVEN agreed that the concept of model legislation required further consideration, particularly since it did not appear to be acceptable to all members of the Committee. It was not merely a matter of making amendments, but of discussing the substance of the proposals. It was not the Committee's fault that it had no time for such debate at the current session.

16. The CHAIRMAN said he assumed it was the Committee's wish that a working group, consisting of Mr. Rechetov, Mr. Wolfrum, Mr. Shahi, Mr. Ferrero Costa,

Mr. Lamptey and Mr. Banton, should meet that afternoon with a view to reaching agreement on a statement to be included in its report to the General Assembly on the subject of draft model legislation.

It was so agreed.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7) (*continued*)

Draft concluding observations concerning reports of States parties

17. *The CHAIRMAN* invited the Committee to consider the draft texts of concluding observations on reports submitted by States parties, in the order in which the reports had been considered by the Committee.

18. *Mr. de GOUTTES*, speaking on a point of order, said consideration of its concluding observations was one of the most important of the Committee's tasks and called for special care. It was all the more important, therefore, that versions should be available in each of the working languages. While he realized that on the present occasion the Secretariat had been unable to prepare translations owing to lack of time, he would not wish that to be taken as a precedent. It should be clearly understood that the normal practice was for concluding observations to be circulated in all the Committee's working languages.

Fifth, sixth, seventh and eighth periodic reports of Belgium (CERD/C/194/Add.3) (*concluded*)[*]

19. *Mr. FERRERO COSTA*, country rapporteur, read out the following proposed concluding observations:

> "1. The Committee noted with great interest the major constitutional and legislative reforms adopted in Belgium which have introduced positive changes in relations between the French-speaking and Dutch-speaking communities. Nevertheless, it requested Belgium to provide further information on the German-speaking community and other minorities with Belgian nationality in its next periodic report. In this regard, more demographic data were needed, together with information on the measures and policies designed to ensure the exercise of civil and human rights by these minorities on an equal footing with the majority communities.
>
> "2. The Committee gave consideration to the Act of 30 July 1981 for the suppression of certain acts based on racism and was of the view that, while it represented progress in the campaign to combat racial discrimination in Belgium, the scope of the Act was too limited and thus was not complying fully with the provisions of article 4 of the Convention. The Committee also requested further substantive information

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[*] Resumed from the 940th meeting.

> on complaints lodged with the courts in connection with the implementation of the Act, and on the existence of groups currently promoting racial discrimination.
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> "3. The Committee also accorded special attention to the situation of aliens resident in Belgium and asked for further information on the exercise by such persons of the rights referred to in article 5 of the Convention on an equal footing with Belgian nationals, with special reference to the employment conditions of immigrant workers, which were of concern to the Committee.
>
> "4. The Committee hoped that the next periodic report would be submitted in good time."

20. *Mr. DIACONU* noted that in paragraph 1 of the text reference was made to "the exercise of civil and human rights". Since civil rights in fact formed part of human rights, he suggested that the words "civil and" should be deleted.

21. In reply to a question from *Mr. van BOVEN*, *Mr. FERRERO COSTA* said that the phrase "other minorities with Belgian nationality" in paragraph 1 referred to groups from former Belgian colonies.

The concluding observations on the reports of Belgium, as amended, were approved.

22. *The CHAIRMAN* said that the Committee had concluded its consideration of the reports of Belgium.

Tenth and eleventh periodic reports of Ghana (CERD/C/197/Add.7) (*concluded*)[*]

23. *Mr. LECHUGA HEVIA*, country rapporteur, summarized the proposed concluding observations on the reports of Ghana.

24. *Mr. BANTON* read out the text in English:

> "1. The Committee noted that, as a result of the important political changes now taking place in Ghana, including the adoption of a new Constitution and the election of a new Government, the report contained in document CERD/C/197/Add.7 was out of date.
>
> "2. The Committee welcomed the announcement by the representative of the Government that the legislative measures adopted in the past few years to guarantee the rights of citizens, regardless of their ethnic origin, religion or sex, continued to be in force and will be strengthened when they are revised in order to bring them into line with the principles embodied in the new Constitution.

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[*] Resumed from the 944th meeting.

> "3. The Committee pointed out that Ghana's next report should be prepared according to the guidelines adopted for this purpose and should contain all the information that was missing in the last report. The Committee needed to have copies of the new Constitution and new laws which had been adopted in order to make a proper assessment of the situation with regard to the implementation of the Convention in the country. It thanked the Government of Ghana for the interest it has shown in maintaining a constructive dialogue with the Committee."

25. Mr. GARVALOV proposed that the word "missing" should be replaced by "not provided" in the first sentence of the third paragraph.

The concluding observations on the reports of Ghana, as amended, were approved.

26. The CHAIRMAN said that the Committee had concluded its consideration of the reports of Ghana.

Eighth, ninth, tenth and eleventh periodic reports of Greece (CERD/C/210/Add.1) (concluded)*

27. Mr. WOLFRUM, country rapporteur, read out the following proposed concluding observations:

> "1. The Committee expressed its appreciation that, after an interval of six years, the Government of Greece had renewed the dialogue with the Committee by filing its eleventh report which equally contained the eighth to tenth reports.
>
> "2. In considering the report it was noted by the Committee that the Greek legal order implemented article 4 of the Convention. The Committee, however, also noted an absence of information about judicial proceedings in which the respective provisions of the Greek criminal law had been invoked.
>
> "3. In order to determine whether the social differentiation of Muslims, Pomaks, Gypsies, Armenians and Albanians, especially but not solely in Western Thrace, had the effect of impairing the human rights and fundamental freedoms of members of those groups, the Committee called upon the Greek Government to include in its next periodic report information on the economic, social and cultural circumstances of these groups, bearing in mind the Committee's General Recommendation VIII regarding the criteria for the identification of ethnic groups, according to which the identification of individuals as members of a racial or ethnic group should only be based upon self-identification by the individual concerned.

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* Resumed from the 941st meeting.

> "4. Bearing in mind the provision of article 2 (1) (c) of the Convention, the Committee called upon the Government of Greece to revise its Nationality Act as far as it differentiated between ethnic Greeks and non-ethnic Greeks, together with any legal or administrative practices which relied on such a distinction."

28. Various suggestions by other Committee members had been taken into account in drafting the observations, the only point on which there still appeared to be some difference of opinion being the reference to Albanians in paragraph 3. He had left that reference in the draft text because the question of Albanians had in fact been raised during the Committee's discussion by both Mr. Aboul-Nasr and Mr. Diaconu.

29. Mr. SONG Shuhua, referring to the penultimate line of paragraph 3, said that his recollection of the Committee's discussions of its definition of a racial or ethnic group was that it was based mainly - and not only - on self-identification.

30. Mr. BANTON proposed the deletion of the word "only", since the wording of General Recommendation VIII included neither "only" nor "mainly".

31. Mr. DIACONU said that he had misgivings about the reference to Albanians as an ethnic group in paragraph 3. It was true that he had raised the question, but the response of the representative of the Greek Government had been that, although there was a scattered population of Albanians in Greece, there was no Albanian minority as such. The Committee should perhaps be cautious about taking a position in the matter and requesting data on such a group. Furthermore, other groups to whom reference had been made, such as Macedonians, were not mentioned. He therefore proposed that the word "Albanians" should be replaced by the words "and others".

32. Mr. RECHETOV proposed replacing the word "implemented" by the words "is in accordance with" in paragraph 2. He would also prefer to end the sentence constituting paragraph 3 after the words "cultural circumstances of these groups", thus deleting the reference to the Committee's definition of racial and ethnic groups. It was a definition much cherished by all Committee members, including himself, but it was not a widely supported one and it might be inappropriate to seek to impose it on a State. He pointed out that the Committee was being somewhat inconsistent in its observations, since its comments on the report of Belgium made no mention of the fact that the Belgian Government did not recognize the existence of national minorities at all.

33. Mr. ABOUL-NASR said that, since the Committee's concluding observations would follow the narrative part of its report which would contain a description of the discussion, he would be in favour of reducing the concluding observations to the essentials and therefore endorsed the proposals made by Mr. Diaconu and Mr. Rechetov.

34. Mr. WOLFRUM said that, as country rapporteur, he could accept the replacement of the word "implemented" by the words "is in accordance with" in paragraph 2 and of the word "Albanians" by "and others" in paragraph 3, and the deletion of the word "only" in that paragraph. He recalled, however, that, when the question of Albanians and other groups had been raised, the representative of Greece had been reluctant to acknowledge the existence of

any minority group; in the circumstances, he thought it necessary for the Committee to refer to the definition it had itself adopted by consensus in General Recommendation VIII. The case of Belgium was somewhat different, since the representative of that country had not denied the existence of the groups to which the Committee had referred.

35. The CHAIRMAN, speaking in a personal capacity, suggested substituting the word "status" for "differentiation" at the beginning of paragraph 3.

36. Mr. SHAHI said that "status" did not at all convey the subtle implication of discrimination contained in the word "differentiation".

37. The CHAIRMAN withdrew his proposal. He took it that the Committee wished to approve the text of the concluding observations, with the proposed amendments except for the second proposal by Mr. Rechetov to delete the latter part of paragraph 3.

The concluding observations on the reports of Greece, as amended, were approved.

38. The CHAIRMAN said that the Committee had concluded its consideration of the reports of Greece.

Third and fourth periodic reports of Maldives (CERD/C/203/Add.1) (concluded)*

39. Mrs. SADIQ ALI, country rapporteur, read out the following proposed concluding observations:

> "1. In concluding the review, the Committee regretted that the Maldives had not been able to respond to its invitation to participate in its meeting and to furnish relevant information. The Committee wished to draw the attention of the State party to the possibility of requesting technical assistance from the United Nations Centre for Human Rights in the preparation of its reports. It hoped to receive a new report shortly.
>
> "2. The Committee noted that the Maldives had stated that, since no forms of discrimination existed in the country, specific legislation was not required. The Committee reiterated that this is not a legally defensible interpretation of the obligations that a State assumes on acceding to the Convention."

40. Mr. ABOUL-NASR suggested that the concluding observations could be sent, together with the summary records of the relevant meetings of the Committee, with a covering letter to the Government of Maldives.

41. It might also be useful to have a reference in the concluding observations to the General Recommendation adopted by the Committee in 1972 (General Recommendation I).

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* Resumed from the 944th meeting.

42. Mr. BANTON suggested that the second sentence of paragraph 2 could be amended to begin: "Calling the attention of the State party to the Committee's General Recommendation I, the Committee reiterated that ...". The rest of the sentence would remain unchanged.

The concluding observations on the reports of Maldives, as amended, were approved.

43. The CHAIRMAN said he assumed the Committee agreed that the text of the Committee's General Recommendation I would be attached to the letter to be sent to the Government of Maldives.

44. He said that the Committee had concluded its consideration of the reports of Maldives.

Fifth periodic report of Colombia (CERD/C/191/Add.1) (concluded)*

45. Mr. WOLFRUM, country rapporteur, read out the following proposed concluding observations:

> "1. The Committee took note of the reform of the Constitution and the substantial legal reforms introduced with a view to protecting human rights. It complimented legislation and the drafting of programmes to enhance the economic, social and educational conditions of the indigenous population. The Committee equally concluded that the indigenous population could benefit from the Government's plans for the conservation of the Amazon region.
>
> "2. The Committee, however, noted that similar projects and programmes for the economic and social situation of indigenous peoples had been launched previously and hence the Committee had expected to be informed about their results.
>
> "3. In general, the report lacked information on the actual economic, social and education situation of the indigenous population. The next report should contain data on the economic, social and educational situation of indigenous groups compared to the rest of the population. Only on the basis of such data would the Committee be in a position to assess accurately the situation of the indigenous population. Further, the Government of Colombia should include information on the factual situation of the black community, on which no adequate information was provided so far.
>
> "4. The Committee reiterated its concern that article 4 of the Convention is not properly reflected in the national penal law.
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> "5. The Committee expressed concern about ongoing violence in Colombia. As already stated by the Human Rights Committee (CCPR/C/CRP.1/Add.18), the measures that have been taken by the Colombian Government do not seem

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* Resumed from the 944th meeting.

> to be sufficient so far to effectively protect the life, health and property of the citizen, and especially of members of the indigenous population."

The concluding observations on the report of Colombia were approved.

46. The CHAIRMAN said the Committee had concluded its consideration of the report of Colombia.

Ninth and tenth periodic reports of Yemen (CERD/C/209/Add.2) (continued)*

47. Mrs. SADIQ ALI, country rapporteur, read out the following proposed concluding observations:

> "1. The Committee appreciated the Yemen Arab Republic's desire to enter into a dialogue so soon after the unification of the country.
>
> "2. The Committee commended the State's willingness to accept such a large number of refugees from Somalia and Eritrea (Ethiopia). It noted that the report lacked adequate information on the status of the Convention in domestic law and the demographic composition of the population and that articles 2, 4, 5 (e), 6 and 7 were not yet fully implemented. Yemen's statement that as no form of racial discrimination existed in the country article 4 had not been enacted, was unacceptable. It was stressed that legislation to enact article 4 is mandatory. The administrative and legal measures to combat prejudices which lead to racial discrimination in education and culture must also be described."

48. Mr. ABOUL-NASR said that the third sentence of paragraph 2 might be construed as meaning that the Committee believed racial discrimination did exist in Yemen. The point, however, was that, whether or not there was discrimination, the penal code must contain provisions to prohibit it. He also felt that the word "must" in the last sentence of the paragraph was unduly peremptory.

49. The CHAIRMAN, speaking in a personal capacity, said that he agreed with the view expressed by the previous speaker, and that the word "must" could be replaced by "ought" in the interests of courtesy to a State party. Similarly, the wording used in paragraph 2 of the concluding observations on the reports of Maldives could be adapted to suit the text under consideration.

50. Mr. YUTZIS said that the obligations arising under article 4 of the Convention were exhaustive, in that no State party could claim exemption unless it had entered a reservation when signing the Convention.

51. Mr. BANTON suggested that the third and fourth sentences of paragraph 2 might be replaced by one sentence, which would read: "Noting Yemen's statement that no form of racial discrimination existed in the country, the Committee decided to call the State party's attention to General Recommendation I".

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* Resumed from the 946th (third part) meeting.

52. Mr. GARVALOV said assertions that no racial discrimination existed in a given country had been encountered before in periodic reports, and the language used in the concluding observations should be direct and to the point.

53. Mr. FERRERO COSTA said that he agreed with Mr. Banton's proposal, but that it would be useful to reiterate the content of the Committee's General Recommendation I, with which the authorities in the State party concerned might not be familiar.

54. Mr. de GOUTTES said that what was required was a general formula for such cases which would refer to General Recommendation I, using wording on the lines of that contained in the concluding observations on the reports of Maldives, namely "... this is not a legally defensible interpretation of the obligations that a State assumes on acceding to the Convention".

55. Mr. SHAHI said that he agreed with the views expressed by the previous speakers.

56. The CHAIRMAN suggested that Mr. Banton and Mrs. Sadiq Ali should produce a revised draft of the concluding observations for consideration at the next meeting.

The meeting rose at 1.10 p.m.

CERD/C/SR.951
5 November 1992

ENGLISH
Original: FRENCH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-first session

SUMMARY RECORD OF THE 951st MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 11 August 1992, at 3 p.m.

Chairman: Mr. DIACONU

The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7) (continued)

Draft concluding observations concerning reports of States parties (continued)

Seventh, eighth, ninth and tenth periodic reports of Yemen (CERD/C/158/Add.10 and CERD/C/209/Add.2) (concluded)

1. Mr. BANTON submitted the following draft concluding observations concerning Yemen:

> "1. The Committee appreciated the Yemen Arab Republic's desire to enter into a dialogue so soon after the unification of the country.
>
> "2. The Committee commended the State's willingness to accept such a large number of refugees from Somalia and Ethiopia. It noted that the report lacked adequate information on the status of the Convention in domestic law and the demographic composition of the population, and that articles 2, 4, 5 (e), 6 and 7 were not yet fully implemented. The Committee noted that Yemen had stated that, since no form of discrimination existed in the country, specific legislation in respect of article 4 was not required. Calling the attention of the State party to the Committee's general recommendation I, the Committee reiterated that this is not a legally defensible interpretation of the obligations that a State assumes on acceding to the Convention."

The draft concluding observations concerning the seventh, eighth, ninth and tenth periodic reports of Yemen were adopted.

2. The CHAIRMAN said that the Committee had thus concluded its consideration of the seventh to tenth periodic reports of Yemen.

Ninth and tenth periodic reports of Austria (CERD/C/209/Add.3) (concluded)*

3. Mr. BANTON read out the following draft concluding observations:

> "1. The Committee noted that Austria's tenth periodic report was of a brief updating character. A number of questions asked during consideration of the sixth report in 1985 remained unanswered, while the account of the State's obligations under international treaties concerning its ethnic minorities, and of its discharge of those obligations, was too condensed.
>
> "2. The Committee found it necessary to recall that, under article 5 (e) (i) of the Convention, everyone in Austria must be guaranteed the right, without distinction as to race, to equality before the law in the enjoyment of the right to work. This guarantee must cover

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* Resumed from the 947th meeting.

the private as well as the State sector. The Committee was disturbed to learn that, according to a Gallup poll conducted in 1991, significant numbers of Austrians did not recognize the equal rights of Jews in economic life. Since such attitudes can be exploited by racist organizations, the Committee sought information about preventive and educational countermeasures.

"3. The Committee noted that no case of racial discrimination had yet been taken to the Mediation Service or been decided by an Austrian court. Since the absence of complaints might stem in part from victims' ignorance of, or lack of confidence in, the available remedies, the underlying circumstances might be investigated empirically. The Committee expressed appreciation of the extensive oral replies to questions but indicated that the next periodic report should be of a comprehensive character."

4. Mr. ABOUL-NASR, referring to the third sentence of paragraph 2 of the text just read out, said he was surprised that reference was made to the conclusions of an unofficial body such as the Gallup Institute; as to the term "significant numbers", that did not in fact mean very much. While he did not wish to enlarge on the political aspects of the question, he found such a form of words unacceptable. The statement that the Committee had been "disturbed" to learn of the findings of a poll was incorrect; it was true that one member of the Committee had expressed concern, but he (Mr. Aboul-Nasr) was not disturbed at the results of a mere opinion poll on the rights of Jews in economic activity in Austria. Until very recently, the Chancellor of Austria himself had been Jewish. In view of the political connotations of the two last sentences of paragraph 2, he proposed that they should be deleted; the Committee could then either mention the point in the report or simply state in its conclusions that the question had been raised.

5. Paragraph 3 was also unsatisfactory as drafted. By expressing surprise at the absence of complaints, the Committee was giving the impression that it expected some. It was certainly going too far to speak of the "ignorance" of persons living in Austria; what then was to be said about inhabitants of the third world? Why could Austria not be given the benefit of the doubt in the matter, as had been done in the case of all other countries which had no complaints of the kind to report?

6. Mr. LECHUGA HEVIA shared Mr. Aboul-Nasr's doubts regarding the Gallup survey. The results of a poll carried out by an institution totally unrelated to the Committee should be treated with caution.

7. Mr. BANTON pointed out that the Gallup Institute had the highest possible reputation internationally and it was for that reason that it had been cited; 15 per cent of the persons questioned in the poll had considered that the acquisition of capital and land by Jews should be limited by law - in other words, they had wanted the legislature to violate the provisions of the Convention. Such a figure was statistically and morally significant, because that kind of attitude could be exploited by racist organizations. The purpose of the proposed text was to induce the Austrian Government to recognize that that type of situation called for preventive measures, such as those the Committee had very recently declared were needed, notably with regard to the former Yugoslavia.

8. Where paragraph 3 was concerned, he pointed out that ignorance was regarded as only one of a number of possible explanations of the phenomenon; what was involved was not a statement of fact, but merely a supposition. The wording reflected the long discussion that had taken place with the representative of Austria on effective implementation of article 6 of the Convention, an account of which would be given in the report.

9. Mr. ABOUL-NASR said he had no objection to those questions being raised in the report. What he could not agree to was the statement that the Committee had been disturbed by them. Why should Austria specifically be condemned on the strength of a mere opinion poll? In fact, the phenomenon of anti-Semitism and racism was to be found throughout Europe - notably in France, where racist political parties were gaining ground in the elections, and in the United Kingdom. The Committee might draw attention to that disturbing phenomenon but, in so doing, should condemn it wherever it was on the increase, and not only in Austria. Moreover, an opinion poll on anti-Semitism concerned not only Jews, but also Arabs - a fact of which the experts of so renowned a body as the Gallup Institute were certainly aware. For that reason, the Committee should take a broader approach, saying that it was disturbed to note the situation in countries where elections - and not mere opinion polls - revealed a rise in anti-Semitism affecting not only Jews, but also Arabs, who constituted the majority of Semites.

10. Mr. de GOUTTES felt that it would be possible to find a compromise solution to take account of the points made by Mr. Aboul-Nasr. With regard to discrimination against Jews, perhaps the scope of the paragraph in question could be broadened by referring to the need to guarantee equal treatment for all categories of persons - ethnic minorities, refugees, Jews - liable to suffer discrimination. The absence of complaints referred to by the representative of Austria was a problem the Committee was already familiar with; normally, it would not merely take note of the problem, but would ask questions about it. In the present instance, it should tell the State party it was puzzled and ask about the reasons for the absence of complaints.

11. Mr. WOLFRUM said that all States, and in the current instance European States, should be aware of anti-Semitic or xenophobic tendencies emerging on their territory and should take the necessary preventive measures. That point should be made in the Committee's concluding observations, perhaps setting the problem in a broader context as suggested by Mr. de Gouttes. Mr. Aboul-Nasr had rightly pointed out that elections carried more weight than mere opinion polls; as had recently been seen, for example in Germany, such polls could give an inaccurate picture of the true situation. The Committee might simply refer to the recent trends emerging in Europe and ask what preventive measures were being taken in Austria in that connection.

12. With regard to paragraph 3 of the text, it was true that the use of the term "victims" implied that victims in fact existed; it was also true that absence of complaints did not necessarily imply absence of violations. A form of words needed to be found which would avoid any mention of victims, but would nevertheless raise the question.

13. Mr. GARVALOV said he recalled that in the course of the discussion the representative of Austria had stated that he himself was somewhat concerned about the anti-Semitism in his country, though without being able to quote

figures. Mr. Aboul-Nasr had rightly pointed out that the term "anti-Semitism" concerned Arabs as well as Jews. He (Mr. Garvalov) had drawn attention in the course of the discussion to the absence of complaints of racial discrimination in Austria, and had suggested that that phenomenon could be explained either by the victims' ignorance of available remedies, or by the existence of a perfect society - a highly unlikely eventuality in any part of the world.

14. He would therefore prefer the content of paragraphs 2 and 3 of the text to be retained, but with the wording improved.

15. Mr. van BOVEN agreed with Mr. Aboul-Nasr that it would be more appropriate to include the reference to the Gallup poll in the report. He himself had drawn attention to concern about anti-Semitism and xenophobia on the basis of conclusions published by the European Parliament; the Conference on Security and Cooperation in Europe had also recently referred to that threat.

16. It was quite true that Arabs were also Semites and that the term "anti-Semitism" should not necessarily be interpreted as relating to Jews, although in the context of European history it undoubtedly did have such a connotation. That Austria was singled out in that context, whereas the same disquieting trends were present in a number of European countries, was simply due to the fact that it was Austria's report that was under discussion. However, a less selective impression might be given by adding a phrase such as "as elsewhere in Europe".

17. Mr. ABOUL-NASR reiterated that he had no objection to such problems being raised, but felt that their proper place was in the report. The suggestions just made were acceptable, provided that the intent was not to condemn a single country for what was a general phenomenon, nor to single out discrimination against Jews when many other categories of persons were victims of discrimination.

18. Mr. BANTON proposed that, as a compromise solution, the third sentence and the beginning of the fourth sentence of paragraph 2 should be amended to read:

> "The Committee was disturbed to learn that in Austria, as in other parts of Europe, there are signs of increasing racism, xenophobia and readiness to ignore the rights of members of ethnic minorities. Since hostile attitudes can be exploited ...".

The second sentence of paragraph 3 should be replaced by the following:

> "As when other countries had reported an absence of such cases, the Committee cautioned against inferring that this absence proves that there is no discrimination."

19. Mr. YUTZIS said that he was at a loss to understand why the Committee was deleting the reference to the problem of hostility to Jews, a problem which it had explicitly recognized as relating particularly to Austria.

20. Mr. ABOUL-NASR endorsed the compromise text proposed by Mr. Banton.

21. Mr. de GOUTTES suggested that, to meet the point made by Mr. Yutzis, the word "anti-Semitism" should be added after "racism, xenophobia" in the new wording of paragraph 2 proposed by Mr. Banton.

22. Mr. GARVALOV said he could not accept that xenophobia should be limited to Europe. He proposed the following wording: "The Committee was disturbed to learn that in Austria, too, there were signs of ...".

23. Mr. BANTON proposed that, in order to avoid using the ambiguous term "anti-Semitism", the words "including Jews" should be added to the proposed new paragraph 2, after the words "to ignore the rights of members of ethnic minorities".

24. Mr. WOLFRUM suggested that the word "minorities" should be replaced by "groups".

25. Mr. GARVALOV reiterated that he could not agree that the phenomenon should be limited to Europe.

26. Mr. AHMADU felt that it would be more appropriate to say "as in other parts of Europe".

27. Mr. SHAHI considered that the Committee should accept the text proposed by Mr. Banton, as amended by Mr. de Gouttes.

28. Mr. RECHETOV proposed that the phrase "as in other countries" or "as in other States" should be inserted in the new paragraph 2 proposed by Mr. Banton. As he saw it, it was not appropriate to condemn Europe in particular; there was currently a general increase in xenophobia throughout the world. He could agree to the addition of the word "anti-Semitism" because it reflected the true situation in Austria, as in other countries. However, he found it regrettable that observations in the initial text had been weakened.

29. Mr. WOLFRUM considered it inappropriate to make reference to the results of an opinion poll as had been done in Mr. Banton's initial text; the Committee should base itself on more solid evidence. As had already been pointed out, a former Austrian Chancellor had been Jewish. He supported the new text read out by Mr. Banton.

30. Mr. ABOUL-NASR said he could not agree with the accusations made by Mr. Yutzis regarding anti-Semitism in Austria. It would be discriminatory to single out Austria in that connection.

31. Mr. de GOUTTES suggested that, in order to avoid any misunderstanding, the text should refer to "anti-Jewish tendencies" rather than to "anti-Semitism".

32. Mr. ABOUL-NASR said he could not endorse that wording either.

33. Mr. FERRERO COSTA suggested that if continuing disagreements on Mr. Banton's new proposal meant that the debate would be unduly prolonged, the Committee would have to consider putting the text to the vote.

34. Mr. LECHUGA HEVIA said that before proceeding to a vote the Committee should be provided with a written text.

35. Mr. SHAHI said he too had some misgivings about the last amendment proposed by Mr. de Gouttes. Although he understood the concern of Mr. Yutzis to reflect certain aspects of the actual situation in Austria, he believed that the Committee should weigh its words. He could endorse the last proposal by Mr. Banton and the first amendment proposed by Mr. de Gouttes.

36. Mr. RECHETOV reminded members that the Committee could not accept that a State party should confine itself to declaring that racial discrimination did not exist on its territory. Where anti-Semitism was concerned, the situation should be depicted accurately and truthfully. Mr. Aboul-Nasr might have his own point of view, but he should not ignore the situation that actually existed in a particular country.

37. Mr. SONG Shuhua pointed out that anti-Semitism was unknown in Asia. He would prefer to retain the last text proposed by Mr. Banton, with the first amendment suggested by Mr. de Gouttes.

38. Mr. SHAHI agreed that racism existed in all countries, but unlike Mr. Rechetov, he did not think the same was true of anti-Semitism. In his view, therefore, it was unwise to refer to "other countries".

39. Mr. AHMADU pointed out that there was broad agreement on Mr. Banton's amendments and that Mr. Yutzis, despite his earlier comments, was not opposed to that text.

40. Mr. de GOUTTES said that one difficulty had in fact already been resolved by Mr. Banton's last proposal. There remained one other difficulty which could likewise be resolved, and he suggested that a reference to Europe be inserted in the proposal: "The Committee was disturbed to learn that in Austria, as in other European countries, there are signs of increasing racism ...".

41. The CHAIRMAN suggested that, in order to arrive at a consensus, the Committee should adopt the draft concluding observations as reworded by Mr. Banton, with the amendment proposed by Mr. de Gouttes.

It was so decided.

42. Mr. ABOUL-NASR pointed out that in the concluding observations a number of accusations had been made against Austria; the Committee would need to have that country's comments so that they could be annexed to the report.

43. The CHAIRMAN said he doubted whether the Committee could request Governments to submit comments on its concluding observations at short notice. He noted that consideration of the ninth and tenth periodic reports of Austria had thus been concluded.

Tenth and eleventh periodic reports of Costa Rica (CERD/C/197/Add.8) (concluded)*

44. Mr. de GOUTTES read out the following draft concluding observations concerning the tenth and eleventh periodic reports of Costa Rica:

> "The Committee appreciated the continued willingness to maintain dialogue shown by the Government of Costa Rica, which had submitted its tenth and eleventh periodic reports in 1991 and had sent a delegation to introduce them at the current session. After noting the positive aspects of those reports and the position occupied by Costa Rica in the field of human rights, the Committee observed that the presentation of the eleventh report did not conform to the general and consolidated guidelines regarding the form and content of reports.
>
> "Deficiencies were apparent in the general part, which should have been devoted to the general background against which the Convention was being implemented, but which did not concentrate sufficiently on matters of specific interest to the Committee.
>
> "There were more serious deficiencies in the analytical part, which should have dealt with the implementation of each article of the Convention:
>
> "There were too few practical examples or relevant statistics, particularly on cases of complaints, prosecutions and convictions for acts of racial discrimination;
>
> "The main deficiencies lay in the presentation of the actual situation of the ethnic minorities, especially Indians and blacks, the social indicators of the non-integration of those population groups, the difficulties and discrimination to which they were exposed (right to land, health, freedom of movement, education, etc.), the damage caused to the environment of the Indians, and the obstacles they might encounter in claiming compensation for such damage.
>
> "The members of the Committee laid special emphasis on the last-mentioned omissions. In particular, a number of them drew attention to the problem of the status of the Indian 'reservations' and the concomitant risk of social exclusion.
>
> "In conclusion, while welcoming the additional explanations given by the Costa Rican delegation in its oral presentation, the Committee requested the Government of Costa Rica to provide precise information on all those points in its twelfth report, the presentation of which should conform to the Committee's general guidelines."

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* Resumed from the 942nd meeting.

45. Mr. ABOUL-NASR said he would have preferred the concluding observations to be shorter. He proposed that: the words "conform to" in the sixth line of the first paragraph should be replaced by "follow"; the words "more serious" in the first line of the third paragraph should be deleted; the word "Indians" should be replaced by "indigenous peoples"; and the wording should be harmonized by using either "the Committee" or "the members of the Committee" throughout.

46. Mr. WOLFRUM proposed that the first sentence of the first paragraph should be deleted in order to bring the text into line with the Committee's concluding observations concerning the reports of other countries. He further proposed that in the penultimate paragraph the words "The members of the Committee" and "a number of them" should be replaced by "the Committee".

47. Mr. van BOVEN considered the draft submitted to be satisfactory and endorsed the various amendments proposed. He nevertheless felt that the concluding observations might be somewhat overcritical of the country concerned by comparison with others. That again raised the question how the concluding observations were to be brought into line; the Committee might indicate in its report that in future it would try to define certain criteria with a view to achieving more consistency in that regard.

48. Mr. FERRERO COSTA supported Mr. Wolfrum's proposal that the first paragraph should be shortened. The word "deficiencies" used later in the text seemed to him too strong in the case of the report of Costa Rica.

49. The CHAIRMAN observed that the word "*insuffisances*" used in the French version did not have such strong connotations.

50. Mr. de GOUTTES fully supported all the proposed amendments, which toned down somewhat a text that had initially been fairly hard-hitting. He read out the text again, with the amendments proposed, and a few minor drafting changes of his own. The term "deficiencies" was now replaced by "omissions", which was perhaps a more neutral expression.

The draft concluding observations concerning the tenth and eleventh periodic reports of Costa Rica, as orally amended, were adopted.

51. The CHAIRMAN said the Committee had thus concluded its consideration of the tenth and eleventh periodic reports of Costa Rica.

Fifth and sixth periodic reports of Bangladesh (CERD/C/192/Add.3) (*concluded*)*

52. Mr. YUTZIS (Country Rapporteur) proposed the following text:

> "1. While recognizing the economic difficulties of Bangladesh, the Committee requested better demographic data in order to understand the position of ethnic minorities.

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* Resumed from the 943rd meeting.

> "2. The Committee deeply deplored the persistent and grave violations of the human rights of the ethnic minorities in the Chittagong Hill Tracts at the hands of the military and paramilitary forces. In failing to protect those rights, the Government was not fulfilling its obligations under the Convention. Since the State representative was not in a position to respond to questions at the August meeting, the Committee looked forward to receiving further information."

53. The text was a short one, which took into account consultations he had held with several members of the Committee and which, in his view, represented the minimum that could be asked of the State party. However, to reflect certain comments made by members of the Committee, he proposed that the following new paragraph should be inserted between paragraphs 1 and 2:

> "The Committee welcomed the strengthening of democracy in Bangladesh, which could benefit the ethnic minorities."

54. Mr. ABOUL-NASR said that, although the text was short, it still contained elements he had objected to. Regarding paragraph 2, which would become new paragraph 3, he pointed out that if the paragraph proposed was inserted, the Committee would have to await a reply from the Government before formulating a final opinion. Failure to do so would amount to accusing the Government without giving it the opportunity to defend itself. For the moment, therefore, he suggested that all the accusations contained in the paragraph should be deleted.

55. Mr. AHMADU proposed that Bangladesh's economic and political difficulties should be referred to in paragraph 1 of the text. If the information on the ethnic minorities in the Chittagong Hill Tracts had not been provided by the Government, he agreed that the text of paragraph 2 should be amended so as to inform the Government that the Committee had received information from other sources.

56. Mr. SONG Shuhua noted that the concluding observations proposed were generally critical of the report of Bangladesh. It would, in his view, be advisable to add something positive to paragraph 2, for otherwise the Bangladesh Government might take a poor view of the Committee's observations, which could have repercussions on the continuation of dialogue between the Committee and the Government.

57. Mr. WOLFRUM reminded members that the representative of Bangladesh had not replied to the questions put to him and that as a result the Committee was not able to make a judgement. As currently drafted, paragraph 2 implied that the facts had been established, and he was accordingly unable to endorse it. In addition, he considered that the words "persistent and grave violations" referred to very specific crimes and should be deleted as being inappropriate in the context.

58. Mr. de GOUTTES stressed that all members of the Committee were concerned about the situation of the ethnic minorities in the Chittagong Hill Tracts and ought to tell the Government so in their concluding observations. With a view to finding a form of words which could be adopted by consensus, he proposed

that in paragraph 2 the words "deeply deplored" should be replaced by "expressed its concern at allegations of ... and requested explanations on the matter".

59. Mr. ABOUL-NASR proposed that the first sentence of paragraph 2 should be amended to read: "The Committee expressed grave concern at reports of violations of the human rights of the ethnic minorities in the Chittagong Hill Tracts". He further proposed that the second sentence of the paragraph should be deleted and the last sentence left unchanged.

60. Mr. van BOVEN suggested that in paragraph 2 of the text the Committee should add a sentence on forced population transfers, expressing its hope that the Government would take the necessary steps to prevent such transfers in future.

61. The CHAIRMAN suggested that in the first sentence of paragraph 2 of the text, after the words "violations of the human rights of the ethnic minorities", the following words should be added: "notably the forced population transfers in the Chittagong Hill Tracts".

62. Mr. van BOVEN pointed out that it was not only the Chittagong Hill Tracts that were concerned. He proposed that a comma be added at the end of the first sentence proposed by Mr. Aboul-Nasr and that the phrase "including the forced population transfers" be added.

63. Mr. AHMADU considered that the words "August meeting" in the last sentence of paragraph 2 of the text were too vague. It should be made clear which meeting was meant.

64. The CHAIRMAN suggested that the words "August meeting" should be deleted. If there was no objection, he would take it that the Committee adopted the draft concluding observations as amended, thus concluding its consideration of the fifth and sixth periodic reports of Bangladesh.

It was so decided.

65. Mr. YUTZIS said he regretted that the concluding observations just adopted by consensus did not reflect the full extent of the suffering endured by the population of the Chittagong Hill Tracts.

Ninth and tenth periodic reports of Chile (CERD/C/196/Add.1) (continued)*

66. Mr. FERRERO COSTA read out the draft concluding observations drawn up jointly by Mrs. Sadiq Ali and himself, incorporating subsequent amendments.

> "1. The Committee welcomed the tenth periodic report presented by the democratic Government of Chile and appreciated the frankness with which the Government acknowledged the history of discrimination against the indigenous peoples.

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* Resumed from the 948th meeting.

> "2. While taking note of the measures the Government of Chile is trying to adopt in this regard, the Committee requested that more information should be given in the next periodic report, following the guidelines of the Committee. The Committee also noted that, although the changes in Chilean society had been negotiated in an orderly and successful fashion, the transition to democracy had nevertheless raised problems. The Constitution was amended after a plebiscite in 1989 and Chile was now pursuing the task of constitutional reform. A bill was now before Parliament to amend the administration of justice, including the Supreme Court, although difficulties were envisaged.
>
> "3. The Committee reiterated the importance of implementing article 4 of the Convention and pointed out that the Penal Code and Code of Criminal Procedure also needed modification.
>
> "4. The Committee welcomed the evidence of an enhanced desire in Chile to fulfil its obligations under the Convention, and noted with satisfaction that the Government of Chile would be considering the possibility of a declaration under article 14."

67. Mr. ABOUL-NASR said he was opposed to the term used to describe the Chilean Government in the first sentence of the text. In his view, the present tense should be used when speaking of the transition to democracy since that process had not yet been completed. And he found the phrase "is trying" in paragraph 2 of the text inadequate, because it implied that there might be obstacles which would prevent the Chilean Government from adopting measures to combat discrimination against the indigenous peoples.

68. He reserved the right to return to questions of substance concerning the draft concluding observations when a printed text had been circulated.

69. Mr. WOLFRUM said he had reservations about the last sentence of paragraph 2 of the text: he wondered whether the problems referred to, but not defined, were in fact within the Committee's competence. He also wondered whether it was really necessary to state that the Constitution had been amended following a plebiscite. The text did not take sufficient account of the question of the indigenous peoples, a question which had been central to the debate on the report of Chile, or of the new measures envisaged for improving the situation of those peoples.

70. Mr. LAMPTEY agreed with Mr. Aboul-Nasr that the term "democratic Government" ought not to be used. He also felt that the text read more like a government statement than the concluding observations of the Committee. The references to the Constitution and to the bill before Parliament were simply items of information such as a State might have provided. If the Committee welcomed the amendments to the Constitution and the bill before Parliament, it should say so clearly or else delete the two sentences in question. Generally speaking, he thought the text should be simplified.

71. Mr. de GOUTTES suggested that, in paragraph 2 of the text, the phrase "transition to democracy" should be replaced by "those changes" in order to avoid any possible misinterpretation.

72. Mr. FERRERO COSTA, by way of clarification, explained that in using the term "democratic Government of Chile" he had merely intended to highlight the fact that after many years under a dictatorial regime, Chile was returning to democracy. Paragraph 2 had been added to take into account (a) the fact that the Government of Chile had frankly admitted the existence of discrimination in the country with regard to the indigenous peoples, and (b) the Committee's desire to have further details on what measures the Government was planning to take in order to remedy that situation. He had no objection to deletion of the references to the Constitution and the bill before Parliament, or to making the text shorter.

73. Mr. AHMADU said the fact that the acts of discrimination against the indigenous peoples had been frankly admitted and that Chile now had a new democratically elected Government did not, in his view, constitute sufficient reason for the Committee not to take a firm stand in its concluding observations. The human rights situation was, in fact, still causing many problems in Chile.

74. The CHAIRMAN said the Committee would resume consideration of its concluding observations concerning the ninth and tenth periodic reports of Chile at the next meeting. He hoped that a new text taking account of members' comments would be distributed.

The meeting rose at 6.10 p.m.

CERD/C/SR.952
17 August 1992

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-first session

SUMMARY RECORD OF THE 952nd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 12 August 1992, at 10 a.m.

Chairman: Mrs. SADIQ ALI

The meeting was called to order at 10.20 a.m.

ORGANIZATION OF WORK (continued)*

1. Mr. de GOUTTES said it had been decided the previous year that there should be regular contacts with the Sub-Commission on Prevention of Discrimination and Protection of Minorities. At the current session, lack of time had made such meetings difficult to arrange. Since the Chairman was in hospital, Mr. Ferrero Costa might contact the Chairman of the Sub-Commission with a view to determining what form future liaison would take.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7) (concluded)

Draft concluding observations concerning reports of States parties (concluded)

Initial report of Saint Vincent and the Grenadines (CERD/C/85/Add.1) (concluded)*

2. Mr. BANTON, country rapporteur, read out the following proposed concluding observations:

> "1. In concluding the review, the Committee regretted that Saint Vincent and the Grenadines had not been able to respond to its invitation to participate in its meeting and to furnish relevant information. The Committee wished to draw the attention of the Government of the State party to the possibility of requesting technical assistance for the United Nations Centre for Human Rights in the preparation of its reports. It hoped to receive a new report shortly.
>
> "2. The Committee asked Saint Vincent and the Grenadines to furnish a copy of that section of the Constitution which is said to provide protection against racial discrimination."

The concluding observations on the report of Saint Vincent and the Grenadines were approved.

3. The CHAIRMAN said that the Committee had concluded its consideration of the report of Saint Vincent and the Grenadines.

Second periodic report of Cape Verde (CERD/C/86/Add.4) (concluded)*

4. Mr. LAMPTEY, country rapporteur, read out the following proposed concluding observations:

> "In concluding the review, the Committee was of the view that Cape Verde had not fully responded to the questions and comments raised by members of the Committee during the consideration of its previous reports. In view of the notable democratic traditions in that country, the Committee particularly regretted that Cape Verde had not fulfilled its reporting obligations under the Convention. The Committee urged the

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* Resumed from the 949th meeting.

> State party to correct this situation and to submit a report, as soon as possible, taking into account the Committee's present review. In this regard, the State party was advised to follow the revised guidelines of the Committee and to provide the core information requested in document HRI/1991/1."

5. Mr. FERRERO COSTA said that he did not agree with the second sentence, which raised an issue that had not been properly discussed in the Committee.

6. Mr. RECHETOV said that the first sentence merely stated a truism, in that no country responded in its report to all of the questions raised in the course of discussion or all of the requests for further information.

7. Mr. LAMPTEY said that Mr. Rechetov's comment was timely, but that that fact did not obviate the need to remind States parties of their reporting obligations.

8. He did not agree with Mr. Ferrero Costa's objection to the second sentence, which was fully compatible with the views expressed during the discussion of the report.

9. Mr. ABOUL-NASR said that the same yardstick must be applicable to all States parties. In order not to cause offence, wording to the effect that the Committee requested the State party further to respond to questions and comments could be incorporated in the first sentence. The second sentence was less than satisfactory in that the Committee appeared to be passing judgement on which States were democratic and which were not.

10. Mr. GARVALOV said that there should be a general observation applicable to cases in which the response of the State party had been inadequate.

11. Mr. ABOUL-NASR said that the first sentence might read: "In concluding the review, the Committee regretted that Cape Verde had not been able to attend the meeting, and that it required further information in response to questions and comments raised by members of the Committee during the consideration of its previous reports".

12. Mr. BANTON, country rapporteur, proposed that the concluding observations should be amended to read:

> "1. In concluding the review, the Committee regretted that Cape Verde had not been able to respond to its invitation to participate in its meeting and to furnish relevant information. The Committee wished to draw the attention of the State party to the possibility of requesting technical assistance from the United Nations Centre for Human Rights in the preparation of its report.
>
> "2. The Committee urged the State party to fulfil its reporting obligations as soon as possible, taking into account the Committee's present review. In this regard, the State party was advised to follow the revised guidelines of the Committee and to provide the core information requested in document HRI/1991/1."

The concluding observations on the report of Cape Verde, as amended, were approved.

Initial report of Papua New Guinea (CERD/C/101/Add.4) (concluded)*

13. Mr. WOLFRUM, the country rapporteur, read out the following proposed concluding observations:

> "1. The Committee regretted that Papua New Guinea had not responded to its invitation to participate in its meeting and to furnish relevant information. The Committee wished to draw the attention of the Government of the State party to the possibility of requesting technical assistance from the United Nations Centre for Human Rights in the preparation of its reports. It hoped to receive a new report shortly.
>
> "2. In drafting its report the Government of Papua New Guinea should not only report on the legal situation as far as the prohibition of racial discrimination is concerned, but should inform the Committee about the social, economic and educational situation of the various ethnic groups, especially about the effect of mining in Bougainville or in other places of Papua New Guinea upon the situation of the local population."

14. He added that, in view of the request for further information, there was no real need for concluding observations.

15. Mr. van BOVEN said that he agreed with the previous speaker that no concluding observations were required, since a request for further information, in accordance with article 9, paragraph 1, had been formally made by the Committee. That request should be reflected in the Committee's report.

16. Mr. FERRERO COSTA said the fact that the Committee had taken a formal decision to request further information did not preclude the possibility of mentioning that request in the concluding observations.

17. Mr. WOLFRUM proposed, on the basis of suggestions made to him, that in the first sentence of the concluding observations, "had not responded" should be replaced by "had not been able to respond", and that the two existing paragraphs should be consolidated. After the third sentence, the text would now read: "In drafting its report, the Government of Papua New Guinea should not only report on the legal situation as far as the prohibition of racial discrimination is concerned, but should inform the Committee about the social, economic and educational situation of the various ethnic groups, and about the effect of mining upon the situation of the local population. In accordance with article 9, paragraph 1, of the Convention, the Committee requested further information from the Government of Papua New Guinea on the situation in Bougainville."

The concluding observations on the report of Papua New Guinea, as amended, were approved.

18. The CHAIRMAN said that the Committee had concluded its consideration of the report of Papua New Guinea.

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* Resumed from the 949th meeting.

Third, fourth and fifth periodic reports of Botswana (CERD/C/105/Add.1) (concluded)*

19. Mr. BANTON, country rapporteur, read out the following proposed concluding observations:

> "1. In concluding the review, the Committee regretted that Botswana had not been able to respond to its invitation to participate in its meeting and to furnish relevant information. The Committee wished to draw the attention of the Government of the State party to the possibility of requesting technical assistance from the United Nations Centre for Human Rights in the preparation of its reports. It hoped to receive a new report shortly.
>
> "2. The Committee invited Botswana to provide an account of integrationist multiracial organizations, of how its legislation corresponds with article 5 of the Convention, and of how easy it is for ordinary people to utilize their legal remedies."

The concluding observations on the reports of Botswana were approved.

20. The CHAIRMAN said that the Committee had concluded its consideration of the reports of Botswana.

Third, fourth and fifth periodic reports of the Lao People's Democratic Republic (CERD/C/105/Add.4) (concluded)*

21. Mr. DE GOUTTES, country rapporteur, read out the following proposed concluding observations:

> "The Committee regrets that the Government of the Lao People's Democratic Republic has not submitted a periodic report since 1984 and has been unable to respond to the invitation to take part in the present session.
>
> "Recognizing the difficult situation in Laos and the changes under way, the Committee wishes to encourage Laos along the path of democratization and to draw its attention to the possibility of obtaining technical assistance from the United Nations Centre for Human Rights in the preparation of its reports.
>
> "The Committee hopes that the Government of Laos will submit its new report as soon as possible. The report should be presented in accordance with the guidelines laid down by the Committee and provide, in particular, information on the country's main social, economic and demographic indicators, on the content of the new 1991 Constitution, on the reforms undertaken with a view to democratization and the protection of human rights, on the measures taken to improve the situation of ethnic minorities, on penal legislation against racism and its application by the courts, on the situation of refugees, on the elimination of 're-education camps' and of restrictions on freedom of movement."

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* Resumed from the 949th meeting.

22. Mr. RECHETOV said he did not understand why an invitation to seek technical assistance was given only to some of the countries that had failed to submit reports or follow the appropriate guidelines. The reference to technical assistance should, in his view, be made in letters addressed to individual countries, not in concluding observations.

23. Mr. SONG Shuhua said that it was not necessary to include a reference to technical assistance, since if countries needed such assistance, they would approach the Centre for Human Rights.

24. Mr. BANTON supported Mr. Rechetov and Mr. Song Shuhua, but thought there would always be slight discrepancies between the concluding observations on different countries. He would provide a review of the problems of drafting such observations for discussion at a later stage.

The concluding observations on the reports of Lao People's Democratic Republic were approved.

25. The CHAIRMAN said that the Committee had completed its consideration of the reports of the Lao People's Democratic Republic.

Initial report of the Solomon Islands (CERD/C/101/Add.1) (concluded)*

26. Mr. LECHUGA HEVIA read out the following proposed concluding observations:

> "1. As the last, and only, report was made nine years ago, the Committee cannot make an up-to-date assessment of the situation in the country with regard to implementation of the Convention.
>
> "2. The initial report of the Government of the Solomon Islands was very incomplete and there has been no response to the questions addressed to the government representative during the Committee's examination of the report.
>
> "3. At that time, neither the Constitution nor the legislation of the country was available, so the Government needs to provide these documents to the Committee.
>
> "4. It can be seen from the discussion in the Committee with the government representative and from the written report itself that the provisions of the Convention are not being fully implemented.
>
> "5. We recommend that a letter should be sent to the Government of the Solomon Islands requesting that, in its next report, it should respond to all the questions put by the Committee and should avail itself of the services of the United Nations Centre for Human Rights in compiling its report."

The concluding observations on the report of the Solomon Islands were approved.

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* Resumed from the 949th meeting.

27. The CHAIRMAN said that the Committee had concluded its consideration of the report of the Solomon Islands.

Sixth periodic report of Lesotho (CERD/C/90/Add.2) (concluded)*

28. Mr. BANTON read out the following proposed concluding observations:

> "1. In concluding the review the Committee regretted that Lesotho had not been able to respond to its invitation to participate in its meeting and to furnish relevant information. The Committee wished to draw the attention of the State party to the possibility of requesting technical assistance from the United Nations Centre for Human Rights.
>
> "2. It hoped shortly to receive a new report in accordance with the Committee's reporting guidelines together with a core document in accordance with the guidelines (HRI/1191/1)."

The concluding observations on the report of Lesotho were approved.

29. The CHAIRMAN said that the Committee had concluded its consideration of the report of Lesotho.

Fourth and fifth periodic reports of Burkina Faso (CERD/C/105/Add.5) (concluded)*

30. Mr. BANTON read out the following proposed concluding observations:

> "1. In concluding the review, the Committee regretted that Burkina Faso had not been able to respond to its invitation to participate in its meeting and to furnish relevant information. The Committee wished to draw the attention of the Government of the State party to the possibility of requesting of requesting technical assistance from the United Nations Centre for Human Rights in the preparation of its reports. It hoped to receive a new report shortly.
>
> "2. When the sixth periodic report was considered, the Committee noted many gaps in Burkina Faso's legislation in respect of the Convention. So far as the Committee is aware, these gaps remain."

The concluding observations of the reports of Burkina Faso were approved.

31. The CHAIRMAN said that the Committee had concluded its consideration of the reports of Burkina Faso.

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* Resumed from the 949th meeting.

Ninth and tenth periodic reports of Chile (CERD/C/196/Add.1) (concluded)

32. Mr. WOLFRUM read out the following proposed concluding observations:

> "1. The Committee took note of the revision of the Chilean Constitution and the changes to the legal system resulting from the return to the rule of law. The Committee expected such development to benefit the ethnic groups in Chile, especially the indigenous peoples.
>
> "2. The Committee welcomed the frankness with which the new Government of Chile acknowledged the history of discrimination against the indigenous peoples. It took note of the measures being taken to improve the situation of indigenous peoples and expects that this policy be continued so as to improve their economic, social and educational status, as well as their enjoyment of human rights in accordance with article 5 of the Convention.
>
> "3. Recalling General Recommendation I, the Committee reiterated the importance of enacting legislation in accordance with article 4. The Penal Code and the Code of Criminal Procedure also needed reconsideration.
>
> "4. The Committee welcomed the statement of the Chilean delegation concerning the possibility that the Chilean Government might make the declaration under article 14.
>
> "5. While appreciating the new policies being developed, the Committee expressed the hope that the next periodic report would contain further information and would follow the Committee's general guidelines."

The concluding observations on the reports of Chile were approved.

33. The CHAIRMAN said that the Committee had concluded its consideration of the reports of Chile.

34. The CHAIRMAN said that the Committee had completed its consideration of all the country reports.

ACTION BY THE GENERAL ASSEMBLY AT ITS FORTY-SIXTH SESSION (agenda item 5)

(a) Annual report submitted by the Committee on the Elimination of Racial Discrimination under article 9, paragraph 2, of the Convention (General Assembly resolution 46/83)

(b) Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights (General Assembly resolution 46/111)

35. Mr. BANTON, referring to the document on the item prepared by the Secretariat, said that the General Assembly's annual debate on effective implementation of international instruments on human rights was assuming increasing importance for the Committee, as it was no longer the only human rights treaty-monitoring body. The action taken by the Assembly, often in accordance with recommendations by the biennial meetings of persons chairing

the human rights treaty bodies had more and more significance for the Committee's work. It was important to discuss the instructions to be given to the Committee's representative at the next such meeting. Its representative would normally be the Chairman, but in view of Mr. Valencia Rodriguez' state of health, another member might have to be appointed. Having regard to the vital need for an improvement in the funding arrangements for the Committee's sessions he suggested that the Committee's representative in the meeting of chairpersons should raise that issue, which could also be brought up in the General Assembly, particularly with regard to invoking the provisions of the Vienna Convention on the Law of Treaties against defaulting States parties.

36. It would be useful if the Secretariat could prepare a document comparing the working methods of the Committee with those of other treaty-monitoring bodies. The document could also compare workloads, and the time available to complete them. Information could also be provided about the use made of pre-sessional meetings: although the Committee itself had never held such meetings, it would be useful to have some knowledge of the system in case members were asked for their views on it in the future. The document could also make a comparison of the ways in which the different bodies made use of country rapporteurs, and how they approached the task of formulating concluding observations.

37. He suggested that the Committee might inform other treaty-monitoring bodies that one of its main challenges had been how to digest its experience in monitoring implementation of the Convention, and how to communicate that experience to a wider audience. It could state that it believed it could play a more active role in enabling States to learn from the experience of other States faced with comparable problems.

38. Mr. van BOVEN, speaking as the member responsible for liaison with the Committee on Economic, Social and Cultural Rights, said that if the Committee wished he could present a short report on that body's last session.

39. Mr. BANTON suggested that it might be advisable to deal first with procedural aspects of the liaison arrangements. The assignation of members at the last session had not been for any particular period, and he suggested that that period should run until 1994, when the Committee could review the position and decide whether new members needed to be designated. Three further names needed to be put forward, two to replace Mr. Rhenan Segura and Mr. Vidas on their respective committees, and a third to be responsible for liaison with the Working Group on Indigenous Populations, who would be Mr. Song Shuhua. The Committee should also bear in mind Mr. Aboul-Nasr's comment that the process of appointing members on a voluntary basis had resulted in a certain imbalance in regional distribution. There was also a need to define specifically the tasks of those responsible for liaison: he suggested that the members concerned might send him their views in writing, which he would then put together in a consolidated document for the next session.

40. Mr. van BOVEN said that, in the light of those comments, he would not present his report at the current session, but would prepare a brief summary in time for the Committee's next session.

41. Mr. YUTZIS reminded the Committee that its decision to make certain members responsible for maintaining contact with other bodies had been taken on the assumption that work undertaken would be entirely voluntary. The persons concerned had not been nominated or elected, and any regional imbalance that might have resulted was entirely unintentional.

42. He saw his own liaison role as simply that of an observer, with the task of reporting on any aspects of the Commission's work that were of interest to the Committee. As he understood it, that was how the role had originally been defined, and he saw no need to alter it.

43. Mr. FERRERO COSTA agreed it had been clearly established that those who had undertaken to be responsible for liaison had done so on a voluntary basis. He supported Mr. Banton's suggestion that the members concerned should continue in their functions until 1994. The presentation of reports by members responsible for liaison, whether written or oral, should be included as an item on the agenda of the Committee's next session.

44. Mr. LAMPTEY said he was opposed to the suggestion that the Committee's representative in the meeting of chairpersons should raise the question of invoking the Vienna Convention on the Law of Treaties in regard to States parties which failed to comply with their obligations. States parties would already be fully cognizant of the provisions of that Convention, and it was not for the Committee to make suggestions as to whether or not they should take action under article 11, paragraph 1, of the Convention on the Elimination of All Forms of Racial Discrimination.

45. He agreed with Mr. Yutzis that the chief task of those responsible for liaison should be to report on matters relevant to the Committee's work. Since all were volunteers, there was no need to specify the period for which they would exercise their functions.

46. Mr. de GOUTTES stressed that liaison with other bodies was in fact of great importance for the Committee, which had been reproached for letting itself become too isolated. Through liaison, it would be able to update its information, and possibly improve its methods of work. Time should be set aside for the Committee to hear the reports concerned at the current session.

47. He suggested that, since the Chairman was not available, Mr. Ferrero Costa should be designated to liaise with the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

48. He supported that proposal, and suggested that it should be adopted by consensus.

The proposal was adopted by consensus.

49. Mr. WOLFRUM suggested that the Secretariat should be asked to furnish members responsible for liaison with the necessary background material, which was often difficult to obtain. Such members should be responsible for bringing to the Committee's attention any differences in procedure, for example, in systems of reporting, from which lessons could be learnt. It would also be helpful to hear of the approach taken by other bodies in areas

where their functions overlapped with those of the Committee - for example, any action taken under article 27 of the International Covenant on Civil and Political Rights, which was concerned with minorities.

50. Mr. BANTON said he would prepare a memorandum for the next session reflecting the discussion.

51. The Committee also had to consider specific suggestions made by the General Assembly as to actions it could take, such as issuing recommendations to States parties, instituting follow-up procedures, devising indicators of progress, or authorizing fact-finding missions.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 9, PARAGRAPH 1, OF THE CONVENTION (agenda item 6) (concluded)*

Draft general recommendations (concluded)

52. Mr. BANTON said a number of draft general recommendations still remained to be discussed, notably Mr. Wolfrum's recommendation on indirect discrimination, his own recommendation on effectiveness, and a recommendation by Mrs. Sadiq Ali on police training. It had also been suggested that the procedure used in respect of Papua New Guinea, namely to request additional information, should also be used in respect of Burundi and Rwanda, and in that connection he read out the following proposed text:

> "In view of recent reports of ethnic conflict in Burundi [Rwanda], and in accordance with rule 65 relating to the provisions of article 9, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee on the Elimination of Racial Discrimination requests further information from Burundi [Rwanda] on that conflict and on its implications for the implementation of the Convention in Burundi [Rwanda].
>
> "The Committee draws the attention of the State party to the Code of Conduct for Law Enforcement Officials adopted by the General Assembly on 17 December 1979 (resolution 34/169). When the military or State security forces exercise police powers, they are expected to observe this Code (commentary (b) to art. 1). Law enforcement agencies should be representative of the community as a whole (preambular paragraph 8 [a]). Force may be used only when strictly necessary (art. 3). No law enforcement official may inflict, instigate or tolerate torture (art. 5). Law enforcement officials who have reason to believe that a violation has occurred shall report the matter to authorities vested with remedial power (art. 8). The General Assembly recommended that States should give favourable consideration to the use of this Code within their framework of national legislation, while the Economic and Social Council (resolution 1986/10, section IX) has called for periodic reports. Any observations of the State party on the relation of this Code to its measures for responding to ethnic conflict would be of interest to the Committee on the Elimination of Racial Discrimination."

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* Resumed from the 950th meeting.

53. There was also a proposal left over from the previous session for the amendment of the general guidelines to include provision of demographic data. That was an important issue, since although it might be argued that the introduction of the "core" document made it unnecessary to request any information of that kind, in fact none of the first eight "core" documents issued had provided satisfactory information in regard to mother tongues.

54. Mr. van BOVEN fully supported the suggestion that further information be requested from Burundi and Rwanda: such an action fell squarely within the Committee's mandate. He pointed out that the Committee had already been urged to be more active in taking initiatives, at least within the limits of its powers as defined under the Convention. When the situation of Yugoslavia had been discussed, it had been pointed out that if the Committee had exercised its functions in good time, it could at least have helped to identify some of the problems involved, and would have better lived up to its responsibilities, as well as contributing towards the United Nations policy of "preventive diplomacy". Where there were clear symptoms of a deteriorating situation, it was vital that the Committee should act promptly, and not simply await reports of violations after the event. In view of the many reports from Burundi and Rwanda of violence, executions and disappearances, he fully supported action under article 9, paragraph 1, of the Convention. The Committee could ask that the information concerned should be supplied within one year.

55. Mr. LAMPTEY said that he would support the proposal to the extent that it requested further information on the conflict from Burundi and Rwanda. He was not, however, in favour of incorporating the remainder of the proposal, which implied that the States were not following the Code of Conduct for Law Enforcement Officials.

56. Mr. SHAHI said that there seemed to be some contradiction between Mr. van Boven's suggestion that the Committee did not have the authority to take practical action, such as the sending of fact-finding missions, and Mr. Banton's reference to the General Assembly's suggestion that it might authorize such missions.

57. Mr. AHMADU fully agreed with Mr. Lamptey's comments on the request to be made to Burundi and Rwanda. The Committee had repeatedly cautioned against passing judgement on States, especially when representatives of the latter were not available to provide explanations.

58. Furthermore, he did not think that information from non-governmental organizations, such as Amnesty International, should be used as a basis for a recommendation or decision by the Committee. Although it could be useful, some Governments considered such reports to be biased and did not recognize the criteria on which they were based.

59. Mr. LAMPTEY pointed out, in reply to Mr. Shahi, that the suggestion about fact-finding missions had not been contained in a General Assembly decision or recommendation but had merely been put forward by certain delegations. He did not believe that it was within the Committee's power under the Convention to send fact-finding missions; nor was it financially feasible. The question of expanding the Committee's role along those lines might warrant further discussion, but at a later stage.

60. Mr. ABOUL-NASR said that it was the Committee's duty to express its concern about well-known and documented facts brought to its attention, but not to pass judgement. He suggested that the Committee should proceed in four stages, in accordance with its mandate. It should draw attention to the situation as reported; express concern; request further information of the States parties concerned; and finally, perhaps, draw the States parties' attention to the scope for action under article 11 of the Convention. Regrettable though that might be, it did not seem that the Committee's mandate under the Convention authorized it to take any further action, such as the sending of fact-finding missions.

61. Mr. WOLFRUM agreed with the four points outlined by the previous speaker. There was, therefore, an emerging consensus within the Committee that it should request further information from Burundi and Rwanda. The second paragraph of the proposal referred to particular areas on which information was sought, and might therefore be redrafted in order to make that clear to the Governments concerned so that they could respond specifically to the Committee's request. Finally, he agreed with Mr. van Boven that a deadline of one year would be appropriate.

62. Mr. SHAHI suggested that the deadline might be set at 1 March 1993 so that the Committee could consider the information at its spring session.

63. Mr. BANTON proposed that, taking into account the comments made by Committee members, the second paragraph of the proposal should be deleted and the first paragraph reworded to read:

> "In view of recent reports of ethnic conflict in Burundi [Rwanda], and in accordance with rule 65 relating to the provisions of article 9, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee on the Elimination of Racial Discrimination requests further information by 1 March 1993 from Burundi [Rwanda] on that conflict, on its implications for the implementation of the Convention in Burundi [Rwanda], and on the relevance to it of the United Nations Code of Conduct for Law Enforcement Officials adopted by the General Assembly on 17 December 1979 (resolution 34/169)."

64. Mr. ABOUL-NASR said that the serious situation in the countries concerned warranted a reference to the Convention and not just to the Code of Conduct.

65. Mr. BANTON said that the insertion of the reference to the Code of Conduct for Law Enforcement Officials had been prompted by information which had been brought to his attention, and to the attention of Mrs. Sadiq Ali, to the effect that the authorities of those countries were not in complete control of the forces used for law enforcement.

66. Mr. DIACONU said he also had some misgivings about referring to only one document, particularly one that had been adopted merely as a resolution of the General Assembly. Mention had been made in the proposal of torture, for instance; a reference to the relevant Convention would have more authority.

67. Mr. van BOVEN said that the Code of Conduct for Law Enforcement Officials was not a very widely known instrument and lay somewhat outside the

Committee's sphere of interest. He would favour a specific reference to article 5 (b) of the Convention on the Elimination of All Forms of Racial Discrimination.

68. Mr. SHAHI expressed agreement with Mr. van Boven's proposal, although he appreciated the reasons for drawing the attention of Governments to the Code of Conduct, namely to strengthen their hand in controlling the unrestrained behaviour of law enforcement officials in some countries. However limited its scope of action was, the Committee should do what it could to protect people against violence.

69. The CHAIRMAN requested Mr. Banton to read out the amended text, taking into account the Committee members' proposals.

70. Mr. BANTON said that the final text remained unchanged up to the word "requests" and should be amended thereafter to read "further information by 1 March 1993 from Burundi [Rwanda] on that conflict and on its implications for the implementation of the Convention, in particular the provisions of article 5 (b), in Burundi [Rwanda]".

The proposal, as amended, was approved.

Revision of the general guidelines

71. Mr. BANTON recalled that the Committee would be required to reconsider its general guidelines regarding the form and contents of reports to be submitted by States parties under article 9, paragraph 1, of the Convention (CERD/C/70/Rev.2), because that document failed to record adequately the amendments agreed to by the Committee in 1991. That would provide an opportunity to consider the possible insertion of a paragraph about the reporting of the ethnic characteristics of a population, a proposal which had been made in 1991 but on which no decision had been taken. It had been proposed that the following passage should be inserted after the first sentence of the revised part II.

> "The ethnic characteristics of the country are of particular importance in connection with the International Convention on the Elimination of All Forms of Racial Discrimination. Many States consider that, when conducting a census, they should not draw attention to factors like race lest this reinforce divisions they wish to overcome. If progress in eliminating discrimination based on race, colour, descent, national and ethnic origin is to be monitored, some indication is needed of the number of persons who could be treated less favourably on the basis of these characteristics. States which do not collect information on these characteristics in their censuses are therefore requested to provide information on mother tongues (as requested in para. 1) as indicative of ethnic differences, together with any information about race, colour, descent, national and ethnic origins derived from social surveys. In the absence of quantitative information, a qualitative description of the ethnic characteristics of the population should be supplied."

72. Mr. SHAHI commended the proposal, which was a very flexible one and provided a constructive response in cases where States parties were reluctant to provide data about the demographic composition of their countries.

73. Mr. LAMPTEY said that the proposal was interesting but required further thought. He was unable to support it as it stood. In some countries, such as Ghana, there was actually a law prohibiting any indication of ethnic or religious differences or origins in official documents. He also disagreed with the criterion of the mother tongue as an indication of ethnic difference.

74. Mr. DIACONU agreed that the Committee should avoid pressing any issues that might be deemed divisive. However, having regard to the principle of the right to be different, an indication should be given of what those differences were so that the Committee could assess the situation in the country concerned.

75. Mr. AHMADU said that he, too, had doubts about the proposed paragraph. His own country was one of many that omitted any reference to ethnic, racial or even religious data in their censuses, for reasons of national unity. Some countries even had constitutional provisions prohibiting the inclusion of such data. He hoped that the Committee would take account of such situations and would accept approximate figures so that, for instance, countries seeking the Committee's advice would not be intimidated by a requirement for precise demographic figures.

76. Mr. WOLFRUM said that he supported the idea behind the proposal, in order to ensure compliance by States parties with article 2, paragraph 2, of the Convention, the provisions of which could not be implemented if a State party did not acknowledge the existence of minorities in its territory. However, the reference to the mother tongue as indicative of ethnic difference was not satisfactory, because it conflicted with the Committee's own definition of a racial or ethnic group as being a matter of self-identification, and because two groups speaking the same language might not necessarily belong to the same ethnic group. He suggested, therefore, that that requirement should be omitted.

77. The CHAIRMAN suggested that Mr. Banton should redraft the proposal in the light of the discussion.

78. Mr. LAMPTEY said that all views must be taken into account in the final version of the text. The matter raised was a very important one. He was not against requesting the provision of information, but would not agree to a revision of the guidelines along the lines proposed in the draft text.

79. Mr. de GOUTTES said that his position was similar to that of Mr. Wolfrum. In France, too, there had been a debate about the provision of statistics on race. The Committee must have some background information, but must adopt a cautious approach to the issue of demographic data. He agreed that the mother-tongue criterion alone was insufficient.

80. The CHAIRMAN said that the Committee would resume its discussion on a revised draft at a subsequent meeting.

The meeting rose at 1.10 p.m.

CERD/C/SR.953/Add.1
5 November 1992

ENGLISH
Original: FRENCH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-first session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 953rd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 12 August 1992, at 4 p.m.

Chairman: Mr. DIACONU

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* The summary record of the first part (closed) of the meeting appears as document CERD/C/SR.953.

The meeting was called to order at 4.45 p.m.

PREPARATORY ACTIVITIES RELATING TO THE WORLD CONFERENCE ON HUMAN RIGHTS (agenda item 11) (A/CONF.157/PC/6/Add.4; A/CONF.157/PC/13; A/CONF.157/PC/37)

1. The CHAIRMAN invited Mr. Shahi, whom the Committee had designated to represent it at meetings of the Preparatory Committee for the World Conference on Human Rights, to give the Committee an oral report on the matter.

2. Mr. SHAHI said he had represented the Committee at the first two sessions of the Preparatory Committee for the World Conference, held in October 1991 and in March and April 1992. He reminded members that the mandate of the World Conference was set out in General Assembly resolutions 45/155 and 46/116. With the ending of the cold war and progress towards democracy, the world had undergone profound changes, and the World Conference should provide an opportunity for an in-depth consideration of possible future trends in the field of human rights. In resolution 45/155 the General Assembly had defined six major human rights objectives for the World Conference, and the Secretariat was currently preparing six studies corresponding to each of those objectives, with the assistance of consultants.

3. The provisional agenda for the World Conference had not yet been finalized. It should be ready in time for the third session of the Preparatory Committee, which would be held in September 1992; in the light of that agenda, it might possibly be decided to undertake additional studies. The Preparatory Committee was expected to hold a fourth session two months before the convening of the Conference.

4. Not only the Latin American, African and Asian groups, but also human rights treaty bodies and other organizations, had proposed various items for inclusion in the provisional agenda. In accordance with the mandate given him in August 1991, he had submitted to the Preparatory Committee, at its first meeting, the list of items proposed by the Committee in its resolution of 14 August 1991, incorporated in its last report to the General Assembly (A/46/18, annex VIII).

5. The provisional rules of procedure of the Conference had been finalized at the second meeting, with the exception of two rules, consideration of which had been referred to the third meeting. Under rule 65, the Committee on the Elimination of Racial Discrimination would be entitled to participate as an observer in the Conference.

6. The specialized agencies and other competent United Nations organs, notably ILO, WHO, UNHCR and UNICEF, had been requested to submit any comments and suggestions which could contribute to the six studies being undertaken by the Secretariat.

7. It was unanimously agreed that the work of the Conference should not duplicate that of the Commission on Human Rights and other competent organs. The ideas put forward for consideration at the Conference were extremely wide-ranging: the relationship between development and human rights; new measures for combating all forms of racial discrimination, both old and new; equality in the field of human rights for women, children, minorities, indigenous peoples and migrant workers; the strengthening and coordination of

the various treaty-based or resolution-based implementation procedures; strengthening of cooperation and technical assistance; the role of non-governmental organizations; strengthening of national human rights institutions, etc.

8. The Preparatory Committee would need to finalize the provisional agenda at its third meeting, taking into account proposals made by the Committee on the Elimination of Racial Discrimination and by other human rights treaty bodies, as well as by the various geographical groups. The Secretary-General of the Conference, in document WCCP.86/6 of May 1992, had suggested a consensual approach to the agenda, which would deal with three main questions: (1) the evaluation of the programme of activities carried out in the human rights field since 1946; (2) the evaluation of the current programme; and (3) recommendations for the programme for the 1990s and beyond.

9. The Secretary-General of the Conference had made the concrete suggestion that 0.5 per cent of the total amount of budgets for development cooperation should be devoted to human rights. He had also emphasized the need to consider the realization of human rights as a combination of three factors: protection, promotion and prevention. In particular, there would be need to develop prevention activities. In particular, he had called for greater efforts to promote universal ratification by the year 2000 of the basic human rights instruments, as well as to promote education and training and technical cooperation programmes.

10. The close links established by the Charter of the United Nations between human rights and peace, notably in Article 1, should also be a major theme of the Conference. The principal organs of the United Nations, such as the General Assembly, the Economic and Social Council and the Security Council, should, as a matter of priority, become increasingly involved in preventive action with a view to averting the massive human rights violations arising from ethnic, ideological or religious conflicts.

11. In conclusion, he pointed out that the World Conference thus provided an exceptional opportunity for an overall consideration of the programme of United Nations activities in the field of human rights, with a view to strengthening human rights, democracy, development and peace.

12. Mr. ABOUL-NASR thanked Mr. Shahi for his report, and proposed that the Committee should ask him to continue to represent it at meetings of the Preparatory Committee.

13. Mr. SHERIFIS fully supported that proposal. He wished only to stress that such a decision should not be construed as implying any kind of criticism of the current Chairman of the Committee, who was held in the highest regard by members.

14. Mr. ABOUL-NASR said that in making his proposal he had had no doubt whatever that Mr. Valencia Rodriguez, whom he himself had nominated as Chairman, would be capable of representing the Committee.

15. Mr. RECHETOV pointed out that the question of who was to represent the Committee could not be decided until members were informed by the Secretariat about the corresponding financial implications, and until they knew how the

other treaty bodies were to be represented at the sessions of the Preparatory Committee. However, he fully agreed that Mr. Shahi, who had represented the Committee so excellently until now, should continue to do so, both on the Preparatory Committee and at the Conference itself.

16. Mr. van BOVEN said that at some point the Committee would need to choose the person who was to represent it at the Conference. As far as representation on the Preparatory Committee was concerned, he too fully supported Mr. Aboul-Nasr's proposal.

17. The CHAIRMAN said that if there were no objections, he would take it that the Committee wished Mr. Shahi to represent it at the final sessions of the Preparatory Committee.

It was so decided.

18. Mr. SHAHI thanked the members of the Committee for the trust they had placed in him. On the point raised by Mr. Rechetov, he pointed out that at the second session of the Preparatory Committee, some bodies had been represented by their Chairmen, and others by a designated representative, whereas some had not been represented at all. Personally, he had no ambitions to go on representing the Committee at future meetings, and would be very glad if the current Chairman was willing to do so.

19. The CHAIRMAN said that the Committee would be glad if Mr. Valencia Rodriguez could represent it at the meeting of the Chairpersons of Human Rights Bodies which was to be held in October, and, possibly, at the Conference.

SECOND DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION (agenda item 10) (E/CN.4/1992/39; E/CN.4/1992/42 and Add.1) (continued)*

Recommendations for a third decade

20. Mr. BANTON said he had circulated to members of the Committee two papers, in English only, with no symbol number prepared by him. The first, which contained proposals for a programme of action for a third decade against racism and racial discrimination, was a new version of a document he had submitted to the Committee in 1991, taking into account the amendments which had been proposed and approved at that time.

21. The second paper concerning a third decade was a list of 10 themes relating to the combating of racism and racial discrimination which might be suggested to the Commission on Human Rights if that body decided - as had been its intention - to devote each year of the decade to a different theme. The list had the dual advantage of acting as a starting point for the Commission's deliberations, and of reminding the latter that the Committee possessed areas of competence which might usefully be taken into consideration in programming the activities of the third decade. It should be possible for both documents to be approved quickly by the Committee.

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* Resumed from the 950th meeting.

22. Mr. ABOUL-NASR said that any programme of action for a third decade against racism and racial discrimination would need to envisage cooperation between three different levels: the national level, with the national committees concerned; the regional level, notably with the Inter-American Commission on Human Rights, the European Commission on Human Rights and the African Commission on Human and People's Rights; and the international level, at which the United Nations and its various institutions and the specialized agencies operated. The programme of action should include provision for building bridges between those three levels.

23. In reply to a question from Mrs. SADIQ ALI, the CHAIRMAN reminded the Committee that the Commission on Human Rights had already taken a decision in regard to the third decade, and that the Economic and Social Council had requested that a start should be made on the necessary preparatory work. In addition, the Economic and Social Council had requested the Secretary-General to prepare a programme of action in that regard.

24. The texts proposed by Mr. Banton could be transmitted to those members of the secretariat responsible for preparing for the decade, and subsequently considered by the Third Committee of the General Assembly.

25. Mr. van BOVEN thanked Mr. Banton for his draft programme of action and his proposal concerning themes for the third decade. The documents contained a number of useful elements, and should be transmitted to the appropriate organs. While he found the 10 themes proposed by Mr. Banton for the decade appropriate, he believed consideration might be given to an additional theme, concerning redress procedures for victims as provided in article 6 of the Convention. That was merely a suggestion, and he would not press it. Concerning Mr. Banton's proposed programme of action, he would merely suggest the addition of sub-headings, for the sake of clearer presentation. Lastly, he pointed out that the third decade which was about to begin would certainly not be the last, since a long struggle would be needed before problems of racial discrimination could be overcome.

26. The CHAIRMAN called on members to put forward further proposals regarding the list of themes, so that a final list could be submitted the following day.

27. Mr. ABOUL-NASR noted that the list of themes proposed by Mr. Banton corresponded to the content of article 5 of the Convention.

28. Mr. BANTON pointed out that his proposed programme of action should be regarded simply as a contribution to the preparation of the programme of action for the third decade. He reminded members that he had drafted it in accordance with a request made to him by the Committee the previous year in his capacity as Rapporteur, a request which was reflected in paragraph 435 of his last report to the General Assembly (A/46/18).

29. Mr. ABOUL-NASR said it was unfortunate that since the Committee had been unable to hold its spring session in 1992, it had not yet had the opportunity to consider the documents prepared by Mr. Banton. They would have to be sent to those responsible for preparing the third decade, indicating that they were texts drafted by the Committee's Rapporteur.

30. Mr. FERRERO COSTA called on the Committee to take a formal decision to transmit the draft programme of action and the proposal concerning themes for the third decade prepared by Mr. Banton.

31. The CHAIRMAN announced that if there were no objections, he would take it that the Committee decided to transmit those documents to the members of the secretariat responsible for preparing the third decade, stating that they had been drafted by Mr. Banton, Rapporteur, at the request of the Committee.

It was so decided.

Draft statement by the Committee on draft model legislation to combat racial discrimination (continued)*

32. Mr. BANTON said he wished first of all to put on record that the Committee had done all in its power, given the limited time and resources at its disposal, to respond to the request made by the General Assembly in resolution 46/1985.

33. He reminded members that he had circulated a document, in English only, with no symbol number, containing a draft statement by the Committee on draft model legislation to combat racial discrimination. In that text, it was recalled that the draft model legislation had already been considered by the Committee in 1991. Members had then asked that it should be amended so as to include forms of protection against racial discrimination other than the application of penal codes. Owing to the cancellation of the Committee's spring session, work on the draft had been suspended for almost a year, and since the summer session had been cut down to two weeks there had been insufficient time to give the text proper consideration. The Committee should now request that, on the basis of the draft statement to be approved by the Committee at the current session, the appropriate section of the Centre for Human Rights should continue work on preparing draft model legislation. The previous year, the Committee had omitted to make that request, and as a result no drafting work had been carried out in the meantime.

34. Mr. SHAHI reminded members that a working group had met the previous day to study Mr. Banton's proposal, with Mr. Yutzis as coordinator, and had suggested amendments which were currently reflected in a new version. The revised draft should appear in the report of the Committee to the General Assembly.

35. Mr. de GOUTTES said the draft declaration submitted by Mr. Banton was a precise and technical text, which merited in-depth consideration. For his own part, he had a reservation to make in regard to the word "narrow" in the fifth line of paragraph 1; in fact, the draft considered in 1991 had not been "narrow" from a criminal point of view but on the contrary had perhaps been too wide.

36. In addition, it might be advisable to consider presenting the draft model legislation in a form other than that of mere guidelines. He would also like reference to be made in the text to certain provisions of the Penal Code such

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* Resumed from the 950th meeting.

as the presumption of innocence, the determination of criminal charges, etc. The principles involved were those already defined in the International Covenant on Civil and Political Rights.

37. The CHAIRMAN proposed that the Committee should revert to the draft statement on draft model legislation submitted by Mr. Banton at its 954th meeting on the following day.

It was so decided.

ACTION BY THE GENERAL ASSEMBLY AT ITS FORTY-SIXTH SESSION (agenda item 5) (continued)

Liaison with other international treaty monitoring bodies and human rights organs

38. Mr. FERRERO COSTA stated that, as requested by the Committee, he had contacted the Sub-Commission on Prevention of Discrimination and Protection of Minorities, currently in session at the Palais des Nations. He had met the Chairman of the Sub-Commission, Mr. Alfonso Martinez, and had expressed the desire that the contacts between the two bodies be maintained. Mr. Martinez, for his part, had said he hoped that relations between the Committee and the Sub-Commission could be stable, and that he had found the meeting between the two bodies in 1991 most useful. Both parties had nevertheless agreed that in view of the very heavy agenda of the two bodies, and in view of the fact that the current session of the Committee had been cut down to a mere two weeks, such a meeting would not be possible that year. However, a joint meeting should be held in August 1993, and should appear as an item on the provisional agendas of both bodies.

39. Mr. de GOUTTES reminded members that a special session of the Commission on Human Rights was to be convened at the Palais des Nations on the following day. The Committee would need to act quickly to ensure that it could be represented at the session by one of its members, if so requested. The member would need to be designated at the next meeting.

The meeting rose at 6 p.m.

CERD/C/SR.954
18 August 1992

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-first session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 954th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 13 August 1992, at 10 a.m.

Chairman: Mrs. SADIQ ALI

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* The summary record of the second part (closed) of the meeting appears as document CERD/C/SR.954/Add.1.

The public meeting was called to order at 10.15 a.m.

SECOND DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION (agenda item 10) (concluded)

Draft statement by the Committee on draft model legislation to combat racial discrimination (concluded)

1. Mr. BANTON said that a draft statement on draft model national legislation against racial discrimination had been circulated to all members of the Committee. Mr. Diaconu had proposed amendments to paragraph 5 and, in particular, the insertion in that paragraph of a new section (b), which would read: "the compatibility of the provisions of the draft law with general principles of criminal law". The existing section (b) would become section (c).

2. Mr. de GOUTTES suggested that the words "the provisions" in the proposed new section (b) should read "certain provisions".

3. Mr. BANTON said that any further comments and amendments should be transmitted to the Centre for Human Rights. What was important was for the Committee to ensure that the General Assembly appreciated that, if the Committee was to carry out its work, it needed the necessary resources and that, given the time at its disposal, it had done all that could be expected.

4. The CHAIRMAN said that the Committee had concluded its discussion on draft model legislation.

ACTION BY THE GENERAL ASSEMBLY AT ITS FORTY-SIXTH SESSION (agenda item 5) (concluded)

(b) Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights (General Assembly resolution 46/111) (concluded)

5. Mr. TIKHONOV (Secretary of the Committee) said it had been agreed that, subject to a formal invitation, a member of the Committee should be nominated to attend the First Special Session of the Commission on Human Rights. No such invitation had been received, but the Committee could be represented by an observer, since the session was public.

6. Mr. RECHETOV pointed out that the Committee had not submitted any document to the Commission containing its conclusions on the report of Yugoslavia, which it had discussed the previous year. The Committee should have drawn the Commission's attention to the fact that the question of minorities in the former Yugoslavia had been considered.

7. Mr. LAMPTEY said that the Committee's comments on the report of Yugoslavia had been incorporated in its report to the General Assembly and were therefore available to all United Nations bodies. The Committee should avoid becoming involved in issues of the moment simply because they were in the public eye. He did not understand why the Committee needed an invitation from the Commission on Human Rights. It had already nominated members to liaise with other human rights bodies, and as Mr. Yutzis was responsible for

liaison with the Commission at all sessions, regular or otherwise, he was the obvious candidate to attend the Special Session and report back to the Committee.

8. Mr. ABOUL-NASR agreed, but pointed out that Mr. Yutzis could merely attend the session and report back to the Committee; he could not take part in the session on the Committee's behalf.

9. Mr. van BOVEN doubted whether there were any formal arrangements under which the Committee could be represented at meetings of United Nations policy-making bodies. However, as an informal arrangement was involved and the meeting was public, a representative of the Committee could attend as an observer.

10. In reply to a question by Mr. ABOUL-NASR, the CHAIRMAN said that, following discussion at a previous meeting, a list had been drawn up of the members to be responsible for liaison with other human rights bodies. He invited the Secretary of the Committee to read out the list.

11. Mr. TIKHONOV (Secretary of the Committee) said that Mr. Wolfrum would be designated as liaison officer with the Human Rights Committee; Mr. van Boven with the Committee on Economic, Social and Cultural Rights; Mr. Banton with the Committee on the Elimination of Discrimination against Women; Mr. Diaconu with the Committee against Torture; Mr. Lechuga Hevia with the Committee on the Rights of the Child; Mrs. Sadiq Ali and Mr. Ahmadu with the Group of Three established under the International Convention on the Suppression and Punishment of the Crime of Apartheid; Mr. Yutzis with the Commission on Human Rights; Mr. Ferrero Costa with the Sub-Commission on Prevention of Discrimination and Protection of Minorities; Mrs. Sadiq Ali with the Working Group on Indigenous Populations; Mr. Ahmadu with the Committee against Apartheid; and Mr. de Gouttes with the Council of Europe and the European Parliament.

The list, as read out, was approved.

ORGANIZATION OF WORK (continued)*

Designation of country rapporteurs for the forty-second session of the Committee (1993)

12. The CHAIRMAN said that the proposed list of country rapporteurs for the Committee's forty-second session had been circulated and would appear as annex VI of its report. Mr. Ahmadu had since volunteered to act as country rapporteur for Sudan.

13. Mr. BANTON said that the Committee would need to discuss the whole question of the procedure for the appointment of country rapporteurs at some future date. The existing practice was somewhat haphazard, and might result in imbalances, but it would remain viable provided that two criteria were kept in mind, namely that no one member of the Committee should be responsible for

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* Resumed from the 952nd meeting.

assessing two successive reports or series of reports from a particular country, and that no member should be called upon to evaluate the report of his own country.

14. Mr. WOLFRUM said that he fully endorsed the two restrictions mentioned by Mr. Banton, but thought that so far the system of volunteering had proved eminently satisfactory.

15. Mr. RECHETOV said that the proviso "if submitted in time" in connection with reports might well apply to more countries than the three listed with an asterisk in the draft text of annex VI. He himself had volunteered to act as country rapporteur for Ukraine, but was still unsure whether that country's report would in fact be submitted in time.

16. Mr. AHMADU said that the interests of impartiality might best be served if Mr. Wolfrum and Mr. Rechetov were to exchange their respective responsibilities in respect of Ecuador and Ukraine.

17. Mr. RECHETOV said that the only reason why he had volunteered to act as country rapporteur for Ukraine was that most of the documentary material that would be submitted would be in Russian or Ukrainian, languages with which he was conversant.

The list of country rapporteurs, as supplemented, was approved.

Press conference to be given by the Committee

18. Mr. TIKHONOV (Secretary of the Committee) said that arrangements had been made to hold a press conference that afternoon, and that the Committee should select members to represent it.

19. The CHAIRMAN said that, after consultations, it had been decided that Mr. Banton and Mr. de Gouttes, and she herself in her capacity as Vice-Chairman, would represent the Committee at the press conference.

The public meeting rose at 11.35 a.m.

CERD/C/SR.955
10 November 1992

ENGLISH
Original: FRENCH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-first session

SUMMARY RECORD OF THE 955th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 13 August 1992, at 3 p.m.

Chairman: Mr. AHMADU

The meeting was called to order at 3.15 p.m.

REPRESENTATION OF THE COMMITTEE AT THE FIRST SPECIAL SESSION OF THE COMMISSION ON HUMAN RIGHTS

1. Mr. YUTZIS, who had represented the Committee at the first meeting of the special session of the Commission on Human Rights, reported on that meeting.

2. Mr. ABOUL-NASR asked whether a draft resolution had been distributed in the course of the meeting, and whether the question of who was to take the seat of the former Yugoslavia had been raised.

3. Mr. YUTZIS said that no draft resolution had been submitted at the first meeting, although it was possible that one might be submitted at the afternoon meeting. A number of people had taken the floor in the name of the former Yugoslavia; those speakers had been Serbs.

ORGANIZATION OF WORK (continued)

4. Mr. BANTON noted that when drawing up the list of country rapporteurs at the preceding meeting, the Committee had included Nicaragua among those States parties whose reports would be seriously overdue in 1993. In fact, Nicaragua's report would not fall into that category until 1994.

5. The CHAIRMAN said that the name of Nicaragua would be deleted from the appropriate section of the list.

6. Mr. RECHETOV said he had noted that in the summary record of the first meeting of the current session, drafted in English (CERD/C/SR.938), which had not yet been translated into other languages, it would appear that the representative of the Secretary-General had acted as "temporary Chairman", a practice contrary to the rules of procedure, which stated that only a member of the Committee was entitled to take the Chair.

7. Mrs. KLEIN (Representative of the Secretary-General) confirmed that in the summary record of the 938th meeting, the Under-Secretary-General for Human Rights, the representative of the Secretary-General, was referred to as "temporary Chairman"; he had occupied the chair until the Chairman of the Committee had been elected.

8. Mr. GARVALOV suggested that in such cases the term "presiding officer" should be used.

9. Mr. LAMPTEY thought that the question was one which concerned not the Committee but the Secretariat: the latter should check on past practice in that connection.

10. The CHAIRMAN asked the Secretariat to ascertain what practice had been followed thus far in the situation referred to by Mr. Rechetov, and to see that it was followed in future.

REPORT OF THE COMMITTEE TO THE GENERAL ASSEMBLY AT ITS FORTY-SEVENTH SESSION UNDER ARTICLE 9, PARAGRAPH 2 OF THE CONVENTION (agenda item 12) (CERD/C/41/CRP.1 and Add.1 to 11; CERD/C/41/CRP.2 and Add.1 and 2)

11. The CHAIRMAN invited the Committee to consider the draft report of the Committee prepared by Mr. Banton, the Rapporteur, on the basis of the documents currently available.

Document CERD/C/41/CRP.1 - Chapter I: Organizational and related matters

Paragraphs 1-9

Paragraphs 1-9 were adopted.

Paragraph 10

12. Mr. BANTON proposed that, in order to reflect the Committee's increased workload, and to explain the reasons for it, the following text should be inserted after the first sentence of paragraph 10: "The Committee has taken new steps to review the implementation of the Convention in States which have been seriously in arrears in submitting their reports. It is contributing to the preparations for the World Conference on Human Rights, and to proposals for a programme to follow up the Second Decade Against Racism and Racial Discrimination. It has to consider an increasing number of communications under article 14 of the Convention. Its work is increasing, but the time available for its meetings has been reduced. These and other tasks have created serious strains."

Paragraph 10, as amended, was adopted.

Paragraphs 11 and 12

Paragraphs 11 and 12 were adopted.

Document CERD/C/41/CRP.1 as a whole, as amended, was adopted.

Document CERD/C/41/CRP.1/Add.2 - Chapter III: Consideration of reports, comments and information submitted by States parties under article 9 of the Convention

13. The CHAIRMAN, speaking as a member of the Committee, said that States parties should be listed in alphabetical order in the tables appearing in the document.

Document CERD/C/41/CRP.1/Add.2 was adopted with the change in presentation requested.

Document CERD/C/41/CRP.2 - Annex I A: States parties to the International Convention on the Elimination of All Forms of Racial Discrimination (132) as at 14 August 1992; B: States parties which have the declaration under article 14, paragraph 1 of the Convention

Document CERD/C/41/CRP.2 was adopted.

Document CERD/C/41/CRP.2/Add.1 - Annex II: Agenda of the forty-first session; Annex III: Country rapporteurs for reports considered by the Committee at its forty-first session

Document CERD/C/41/CRP.2/Add.1 was adopted.

Document CERD/C/41/CRP.2/Add.2 - Annex IV: List of documents issued for the forty-first session of the Committee; Annex V: Documents received by the Committee at its forty-first session, pursuant to decisions of the Trusteeship Council and the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, in conformity with article 15 of the Convention

Document CERD/C/41/CRP.2/Add.2 was adopted.

Document CERD/C/41/CRP.1/Add.4 - Chapter III: Consideration of reports, comments and information submitted by States parties under article 9, paragraph 1 of the Convention (Belgium, Maldives)

Report of Belgium

Paragraphs 1-3

Paragraphs 1-3 were adopted.

Paragraph 4

14. Mr. FERRERO COSTA, referring to the phrase "Members of the Committee expressed ..." used at the beginning of the paragraph, said the Committee should define its practice as far as the comments of country rapporteurs were concerned. The draft report as currently formulated, made no distinction between those comments and the comments of other members of the Committee. That did not reflect the way the Committee's work actually proceeded, since in fact the country rapporteur spoke first and made extremely detailed comments. He had already raised the question at the previous session, but at that time the Committee had been of the view that it was too late to alter the way the draft report was presented. At the current session, it might once more be too late to present the report in a form which would reflect more accurately the Committee's work, but it would be useful to arrive at an understanding of what procedure was to be followed in the future.

15. Mr. BANTON reminded members that when Mr. Ferrero Costa had raised the question earlier, he had proposed that the part of the report dealing with consideration of the reports of States parties should be structured differently so as to reflect, first, the explanations given by the delegation of the State party during the consideration of its report, then the comments of the country rapporteur on how each of the articles of the Convention was being applied, and lastly the comments by members of the Committee. He himself had pointed out at the time that that procedure would complicate the task of the précis writers and of those responsible for drafting the Committee's report. In addition, the reader was not so much interested in who

said what, as in matters of substance. No decision had been taken at the time, and the Committee had merely agreed to include the list of country rapporteurs in an annex.

16. Mr. ABOUL-NASR said that although he understood the points of view of the two previous speakers, he did not think the Committee should engage in what might be a lengthy procedural discussion. The current session of the Committee was being held in difficult circumstances, and he would like to take the opportunity to pay tribute to the Secretariat for its remarkable efforts. He proposed that the meeting should continue with to the adoption of the report, and revert to the question raised by Mr. Ferrero Costa at the next session.

17. Mr. LAMPTEY noted that the Committee continually deferred that question to the following session, and suggested that a decision be taken there and then. He supported the viewpoint of Mr. Banton, adding that the country rapporteur was himself a member of the Committee, and that his questions and comments were often the same as those of other experts.

18. Mr. GARVALOV suggested that a possible solution to the problem might be to begin paragraph 4 with wording along the following lines: "Members of the Committee and the country rapporteur for Belgium ...".

19. Mr. SONG Shuhua thought it would be best to keep the formulation used until now.

20. Mr. FERRERO COSTA pointed out that the point at issue was not so much that of naming the country rapporteur in the summary of the Committee's comments and conclusions, as of reflecting more accurately what had actually taken place when the report had been considered. That being so, he would not stand in the way of the Committee's wish to maintain the established procedure.

21. The CHAIRMAN noted that the Committee wished to maintain the practice followed until now, but requested the Secretariat to take note that the Committee would look into the question again at its next session.

Paragraph 4 was adopted.

Paragraphs 5-20

Paragraphs 5-20 were adopted.

Paragraph 21

22. Mr. van BOVEN, referring to the last sentence of paragraph 21, pointed out that complainants could not have recourse directly to the European Court of Human Rights. He accordingly proposed that the phrase "the European Court of Human Rights" be replaced by "the European Commission on Human Rights".

Paragraph 21, as amended, was adopted.

The part of document CERD/C/41/CRP.1/Add.4 on consideration of the report of Belgium, as amended, was adopted, on the understanding that the concluding observations concerning it adopted by the Committee would be inserted.

Report of the Maldives

The part of document CERD/C/41/CRP.1/Add.4 on consideration of the report of the Maldives was adopted, on the understanding that the concluding observations concerning it adopted by the Committee would be inserted.

Document CERD/C/41/CRP.1/Add.4, as a whole, as amended, was adopted.

Document CERD/C/41/CRP.1/Add.5 - Chapter III: Consideration of reports, comments and information submitted by the States parties under article 9 of the Convention

Report of Greece (paras. 1-14)

Paragraphs 1-14 were adopted.

Report of Costa Rica (paras. 15-31)

Paragraphs 15-18 were adopted.

Paragraphs 19-22

23. Mr. de GOUTTES said he would like to make a few drafting changes to paragraphs 19 to 22 of the French text. He would transmit them direct to the Secretariat, since they did not involve any questions of substance.

24. The CHAIRMAN said he took it the Committee agreed that Mr. de Gouttes should inform the Rapporteur directly of the drafting amendments he wished to make to the French version of the document.

It was so decided.

Paragraphs 19-22 were adopted, subject to the amendments to be introduced by Mr. de Gouttes.

Paragraphs 23-31 were adopted.

Document CERD/C/41/CRP.1/Add.5, as a whole, as amended, was adopted.

Document CERD/C/41/CRP.1/Add.6 - Chapter III: Consideration of reports, comments and information submitted by States parties under article 9 of the Convention

Report of Bangladesh (paras. 1-11)

25. Mr. ABOUL-NASR pointed out that in the paragraphs under consideration the Committee made no distinction between information communicated by State representatives and comments by members of the Committee. As a result, statements were made which he was unable to accept. For example, it was stated in paragraph 4 of the document that the number of security troops

operating in the Chittagong Hill Tracts was estimated at 35,000, that Act No. 89 on district councils had no constitutional basis, and that members of the Committee had asked what the Government's policy was with regard to forced population transfers. He did not think that the Committee was entitled to make such statements. All it could do was to inform the Government of Bangladesh that it had received information as to the existence of certain situations, and ask the Government for clarifications regarding them. It was only on the basis of information provided by the Government that the Committee would be entitled to form a judgement. Accordingly, he would request the Rapporteur to revise all the part of the document concerning Bangladesh, and to introduce the necessary amendments.

26. Mr. BANTON said he would make the necessary amendments to the part of the document relating to Bangladesh. However, he would point out that as a result of the particular circumstances in which the current session had been held, and notably as a result of time constraints, it had not been possible for him to give sufficient attention to the preparation of the draft report.

27. Mr. FERRERO COSTA said the comments made by Mr. Aboul-Nasr illustrated his point perfectly, and explained why he would like the presentation of the Committee's report to be amended in so far as consideration of reports, comments and information submitted by States parties was concerned. It would be clearer to make a definite distinction between the explanations given by the delegation of the State party, the comments of the country rapporteur concerned, the comments of members of the Committee, and the concluding observations.

28. Mr. DIACONU endorsed the views expressed by Mr. Aboul-Nasr. He too had noted that in certain paragraphs the Committee was making statements about situations on which it was not entitled to take a stand. Instead of asserting that certain situations existed, it should rather be raising questions about them.

29. Mr. SHERIFIS proposed that any over-assertive or over-accusatory sentences should be amended by making it clear that the Committee had received certain information indicating the existence of a particular situation which gave rise to concern.

30. The CHAIRMAN said that paragraphs 1 to 11 of document CERD/C/41/CRP.1/Add.6 concerning Bangladesh would be amended by the Rapporteur in the light of comments by members of the Committee before being adopted.

It was so decided.

Report of Ghana (paras. 12-22)

The part of the document CEAD/C/41/CRP.1/Add.6 on consideration of the report of Ghana was adopted, on the understanding that the concluding observations concerning it adopted by the Committee would be inserted.

Document CERD/C/41/CRP.1/Add.9 - Chapter III: Consideration of reports, comments and information submitted by States parties under article 9 of the Convention

Report of Somalia (paras. 1-4)

31. Mr. ABOUL-NASR wondered whether the fact that State parties had not been able to send a representative ought not to be mentioned in the sections of the report that concerned them.

32. The CHAIRMAN reminded the Committee that the Rapporteur had drafted a paragraph to cover that point, which had been considered entirely satisfactory; that paragraph would be inserted whenever appropriate.

33. Mr. BANTON pointed out that the paragraph in question could be applicable to, for example, Cape Verde, but not to Somalia, for which no concluding observation had been adopted.

34. Mr. ABOUL-NASR pointed out that in paragraph 4 of the document under consideration the Committee would be adopting not merely a conclusion, but an actual recommendation.

35. Mrs. SADIQ ALI asked whether the subheading "Concluding observations" was to be inserted before paragraph 4.

36. The CHAIRMAN replied that that would not be done, since the Committee had decided that Somalia was a special case.

37. Mr. BANTON suggested that Mr. Aboul-Nasr's concern could be met by inserting the words "in the absence of a representative of the State party" in the second line of paragraph 2 after the word "decided".

The amendment was adopted.

Paragraphs 1-4, as amended, were adopted.

Report of Cape Verde (paras. 5-10, including concluding observations already adopted by the Committee)

Paragraphs 5-10 were adopted.

Report of Lesotho (paras. 11-14, including concluding observations already adopted by the Committee)

Paragraphs 11-14 were adopted.

Report of Saint Vincent and the Grenadines (paras. 15-19, including the conclusions already adopted by the Committee)

Paragraphs 15-19 were adopted.

Report of the Solomon Islands (paras. 20-23, including the concluding observations already adopted by the Committee)

Paragraphs 20-23 were adopted.

Report of the Lao People's Democratic Republic (paras. 24-28, including the concluding observations already adopted by the Committee)

38. Mr. de GOUTTES pointed out that in the sixth line of paragraph 25 the words "Hmong and Meo tribes" should be replaced by "Hmong or Meo tribes", since both tribes belonged to one and the same ethnic group.

The amendment was adopted.

Paragraphs 24-28, as amended, were adopted.

Document CERD/C/41/CRP.1/Add.9, as a whole, as amended, was adopted, on the understanding that the concluding observations already adopted for each State party would be inserted.

Document CERD/C/41/CRP.1/Add.10 - Chapter IV: Consideration of communications under article 14 of the Convention

39. The CHAIRMAN invited the Committee to consider the document paragraph by paragraph.

Paragraph 1

40. Mr. van BOVEN said that the word "fourteen" at the beginning of the second sentence of the paragraph should be replaced by "sixteen", and that in the following sentence the Russian Federation and the Ukraine should be added to the list of States parties.

Paragraph 1, as amended, was adopted.

Paragraphs 2, 3 and 4

Paragraphs 2, 3 and 4 were adopted.

Paragraph 5

41. Mr. van BOVEN proposed that the following sentence be added at the end of the paragraph: "The Committee decided to send these two communications to the States parties concerned in accordance with rule 92.3 of the rules of procedure". That aspect of the Committee's work aroused a great deal of interest in certain countries, and notably in the Netherlands, and it would be desirable to give a little more information, albeit without undermining the confidential nature of the procedure.

42. Mr. ABOUL-NASR said that he doubted whether public opinion in the Netherlands, however interested it might be in the Committee's work, would be familiar with the content of paragraph 3 of rule 92 of its rules of procedure. It would be better to be less technical when aiming at public opinion, or even at the General Assembly.

43. Mr. van BOVEN explained that he had been prompted to make the proposal because the Committee had in that instance taken an unusual decision in inviting States parties to make comments on the two communications, not only in regard to admissibility, but also in regard to substance; that was an

innovation which deserved a mention, even though its nature could not for the present be disclosed. Jurists in the Netherlands or elsewhere, could certainly consult the Committee's rules of procedure.

44. Mr. de GOUTTES suggested that the proposed amendment be amended to read as follows: "The Committee decided to send these two communications to the State parties concerned for information and comment."

The amendment proposed by Mr. van Boven, as amended by Mr. de Gouttes, was adopted.

Paragraph 5, as orally amended, was adopted.

Document CERD/C/CRP.1/Add.10 as a whole, as amended, was adopted.

Document CERD/C/41/CRP.1/Add.11 - Chapter V: Consideration of copies of petitions, copies of reports and other information relating to Trust and Non-self-governing Territories and to all other territories to which General Assembly resolution 1514 (XV) applies, in conformity with article 15 of the Convention

45. Mr. ABOUL-NASR said that Chapter V addressed a very important aspect of the implementation of the Convention which was never given enough attention by the Committee. In that connection, it should be clearly and honestly stated in the report, first, that the Committee had received no information from the Secretary-General on the matter, and second, that even if the Committee had received the relevant information, it would not have had time to consider it, which was a most unfortunate state of affairs.

46. Mr. FERRERO COSTA said paragraph 1 of the document should be deleted, since it was in contradiction with paragraph 5.

47. Mr. BANTON pointed out that since the Officers had decided at the beginning of the session that the Committee would not have enough time to consider the question, the relevant documents had not been submitted to him.

48. The CHAIRMAN confirmed that in fact, in view of the shortage of time, the Officers had decided to leave that question aside. That point should be emphasized, and it should be clearly brought out that the Committee needed more time if it was to fulfil its mandate.

49. Mr. BANTON pointed out that in its previous report to the General Assembly (A/46/18), the Committee had already pointed out that it had once again found itself in the position of being unable to discharge its duties properly, but that passage had given rise to no comment on the part of the General Assembly; the Committee should stress that point.

50. The CHAIRMAN proposed that it should be left to the Rapporteur to draft a new paragraph 1 of document CERD/C/41/CRP.1/Add.11, taking into account the comments just made.

It was so decided.

Document CERD/C/41/CRP.1/Add.11 as a whole was adopted, subject to the amendments to be made to paragraph 1 by the Rapporteur as agreed.

DRAFT LETTERS TO THE SECRETARY-GENERAL

51. The CHAIRMAN said the Committee had before it two draft letters in English, to be sent to the Secretary-General. He thanked those members who had drafted the letters, and invited the Committee to approve them.

52. The text of the first draft letter was as follows:

"LETTER OF TRANSMITTAL

"Dear Mr. Secretary-General,

"The year 1991-1992 has seen fearful sequences of killings deriving from discrimination based on race, colour, descent and national and ethnic origin in several regions of the world. As indicated in your report 'An Agenda for Peace: Diplomacy, Peacemaking and Peacekeeping' (A/47/277), we have indeed entered into a time of global transition where the cohesion of States has been threatened by brutal ethnic strife and social peace has been challenged by new assertions of discrimination.

"Against this background, the Committee on the Elimination of Racial Discrimination continues to be in the paradoxical situation of having to deal with a much increased workload while the time available for its meetings has been diminished, owing to the persistence of the financial problems resulting from the non-payment of assessed contributions by a number of States parties. Thus, in 1992 the Committee was able to meet for only two weeks instead of the scheduled six weeks.

"Members of the Committee are anxious that the income from State assessments may again be insufficient for meetings in 1993, pending the establishment of new procedures for funding its activities. The Committee hopes that, as a matter of urgency, transitional arrangements will be introduced to ensure the financing of its scheduled 1993 meetings.

"Notwithstanding the short time available, the Committee at its forty-first session considered the situation in 21 States parties, as well as a number of communications under article 14, and had before it four possible general recommendations. It has continued its innovatory procedure for reviewing the implementation of the Convention in States whose reports are overdue. It has also continued to agree by consensus (which is time-consuming) its concluding observations on State party reports. As indicated in the report, the Committee also responded to other developments, including an initiative directed to the Commission on Human Rights concerning the ethnic conflicts in the former Yugoslavia, and has made contributions to the World Conference on Human Rights, to the projected Third Decade to Combat Racism and Racial Discrimination, and to the process of improving the coordination of the human rights treaty monitoring bodies. However, owing to the lack of time it was not possible, *inter alia*, to consider petitions and other information relating to the non-self-governing territories in accordance with article 15 of the Convention, or to hold a second meeting with the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights.

"At its 956th meeting, held today, 14 August 1992, the Committee unanimously adopted its 1992 report in fulfilment of its obligations under the Convention, which is submitted to you herewith for transmission to the General Assembly at its forty-seventh session.

(Signed) Luis Valencia-Rodriguez
Chairman
Committee on the Elimination
of Racial Discrimination"

53. Mr. ABOUL-NASR said that he found the last sentence of the penultimate paragraph of the draft letter unnecessary, and suggested that it should be deleted.

54. Mr. LAMPTEY said that he would like the words in brackets in the fourth paragraph to be deleted.

55. The CHAIRMAN, speaking as a member of the Committee, suggested that in the first line of the third paragraph of the draft letter the word "anxious" should be replaced by "concerned".

56. It was further proposed that in the same line the word "income" should be replaced by "contributions".

57. The CHAIRMAN said that if there was no objection, he would take it that the Committee approved the draft letter, as orally amended.

It was so decided.

58. The text of the second draft letter was as follows:

"Dear Mr. Secretary-General,

"As you may be aware, the operations of the Committee on the Elimination of Racial Discrimination had been seriously impaired in recent years by financial problems stemming from the non-payment or late payment of assessed contributions by a number of States parties to the Convention on the Elimination of All Forms of Racial Discrimination. As a result of these difficulties, the frequency and length of the Committee's meetings have had to be curtailed repeatedly since 1986. In this regard a low point had been reached during the 1992 exercise, when only one-third of the normal meeting time was available to the Committee - one session of two weeks' duration, rather than the normal two annual sessions of three weeks' duration each.

"Under such circumstances, the Committee has not been able to keep up with its workload and has been finding it more and more difficult effectively to discharge its mandate under the Convention. Considering the significant increase in the Committee's workload in recent years and the growing prominence of threats to peace based on ethnic and racial discrimination - to which you have rightly drawn special attention in your Agenda for Peace (A/47/277) - this situation is both unjustifiable and paradoxical.

"The Committee has noted with great satisfaction that within the past year the General Assembly and the States parties have initiated a process - involving amendments of the Convention and the transfer of financial responsibility for all activities under the Convention to the United Nations - that promises to provide a lasting solution to the problem. However, although the General Assembly is expected to approve the amendment this fall, the formalities relating to the adoption of the amendment by the States parties will take some time. Accordingly, it will be necessary to find some means for meeting the Committee's financial needs on an interim basis during the transitional period that lies immediately ahead, particularly during 1993.

"It is anticipated that during the course of 1993, States parties to the Convention will provide a part of the required financing through assessed contributions but that additional resources, up to approximately US$ 250,000, will be needed if the Committee is to be able to hold its scheduled three week sessions in the spring and fall of next year. Such resources could be made available, we understand, either through an advance from the Contingency Fund of the United Nations - a practice that was frequently resorted to prior to 1986 - or through a supplementary budgetary allocation for 1993 from the General Assembly.

"The Committee would be most grateful for your favourable action on this request, which would enable it not only to perform its ongoing tasks more effectively but also to make substantial contributions in dealing with the acute problems relating to discrimination that are currently facing the international community. Since States parties' financial contributions represent only about 10 per cent of the total cost of servicing of the Committee it is all the more regrettable that the Committee's work should be so severely hampered by a shortfall in that part of the financing.

"Accept, Sir, the assurances of my highest consideration.

(Signed): Luis Valencia-Rodriguez
Chairman,
Committee on the Elimination
of Racial Discrimination"

59. Mr. ABOUL-NASR thought there was no need to enter into details by indicating the amount which would meet the Committee's needs, and suggested that the phrase "up to approximately US$ 250,000" in the penultimate paragraph should be deleted. In any event, the word "additional" was not appropriate, since what was involved was the Committee's normal expenditure.

60. Mr. LAMPTEY said he would like the last sentence of the text to be deleted.

61. Mr. RECHETOV, referring to the last paragraph of the text, thought the reference should be to racial discrimination and not to discrimination in general. In addition, such a description of the Committee's work seemed to him too restrictive in the light of the scope of the problems with which it had recently had to deal. Perhaps the passage should be revised accordingly.

62. The CHAIRMAN, speaking as a member of the Committee, pointed out that the Committee would not be holding its sessions in "spring and fall" but in "spring and summer". He further proposed that the penultimate sentence of the third paragraph should be deleted, since it was not for the Committee to explain to the Secretariat the problems it would encounter.

63. Mr. BANTON thought it would be better to retain the sentence on the grounds that it was not certain whether the question was equally clear to the Secretariat.

64. Mr. ABOUL-NASR said it was unlikely that the letter would reach the Secretary-General, or even the Secretary-General's Office. It would probably be transmitted to the office of Mr. Blanca, who had promised to take up the matter personally.

65. Mr. LAMPTEY thought the sentence in question should be retained because the meaning of the text would be changed completely if it were deleted. It was true that thousands of letters were sent to the Secretariat, but they would all eventually be taken into consideration. In addition, in the present case, Mr. Blanca was prepared to follow up the case personally.

66. Mrs. KLEIN (Representative of the Secretary-General) confirmed that Mr. Blanca had agreed to transmit the Committee's letter to the Secretary-General, together with a letter of recommendation. She reminded members of the ongoing procedure for amending the Convention, and pointed out that amendments would not enter into force until they had been approved by the General Assembly and accepted by a two thirds majority of States parties. The penultimate sentence of the third paragraph accurately reflected that situation, and showed why a transitional period was needed.

67. Mr. ABOUL-NASR said that in that case a solution would not be possible for at least three or four years. Accordingly, the Committee had no other alternative than to request the Secretary-General to find some means of meeting its expenses in the meantime.

68. The CHAIRMAN noted that that was exactly what was indicated in the last sentence of the third paragraph.

69. Mr. LAMPTEY, reverting to Mr. Aboul-Nasr's proposal to delete the word "additional" and the reference to $250,000 in the penultimate paragraph of the text, said that in his view the word "additional" was necessary.

70. Mr. SHAHI pointed out that if the sum of $250,000 was mentioned, any fears aroused by the word "additional" would be allayed.

71. Mrs. KLEIN (Representative of the Secretary-General) explained that the figure of $250,000 represented the maximum amount the Committee would need in order to hold two three-week sessions if States parties made no financial contributions.

72. Mr. SHERIFIS, supported by Mr. WOLFRUM and Mr. LAMPTEY, suggested that the figure referred to should be retained, and that the word "only" should be added before "a part of the required financing" in the fourth paragraph.

73. After Mr. BANTON had made a further proposal for the solution of the problem, the CHAIRMAN requested him to revise the wording of the fourth paragraph taking into account the various suggestions made by members of the Committee. If there was no objection, he would take it that the Committee decided to approve the draft letter together with the amendments to be made to the fourth paragraph.

It was so decided.

The meeting rose at 5.40 p.m.

CERD/C/SR.956
19 August 1992

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-first session

SUMMARY RECORD OF THE 956th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 14 August 1992, at 11 a.m.

Chairman: Mr. DIACONU

The meeting was called to order at 11.10 a.m.

LETTER FROM MR. VALENCIA RODRIGUEZ

1. The CHAIRMAN read out a letter from Mr. Valencia Rodriguez, thanking the Committee for the flowers sent to him on the occasion of his unexpected illness. He suggested that the Secretariat should convey to Mr. Valencia Rodriguez the Committee's best wishes for a speedy recovery.

It was so decided.

REPORT OF THE COMMITTEE TO THE GENERAL ASSEMBLY AT ITS FORTY-SEVENTH SESSION UNDER ARTICLE 9, PARAGRAPH 2, OF THE CONVENTION (agenda item 12) (concluded) (CERD/C/41/CRP.1/Add.1, Add.3, Add.6, Add.7, Add.8, Add.8 (Part II), Add.9 (Part II) and Add.12)

Document CERD/C/41/CRP.1/Add.6

2. Mr. BANTON, Rapporteur, referring to paragraph 4, said that the third sentence should begin with the phrase: "There were said to be an estimated 35,000 ...", and the fourth sentence with the words: "It was alleged that houses had been destroyed ...". The penultimate sentence should be amended to read: "Members asked whether it was true that Act No. 89 on district councils, which guaranteed ethnic groups some representation, had no constitutional basis and in that event could be repealed." The last sentence should read: "The members of the Committee also asked what the Government's policy was with regard to population transfers, whether the populations inhabiting the areas to which others moved had been consulted, and whether they were in any way recompensed for any deterioration in their circumstances that might result."

3. Mr. ABOUL-NASR suggested that in the last sentence of paragraph 4 the phrase "It was also asked" should be substituted for "The members of the Committee also asked".

4. Mr. BANTON, Rapporteur, said that paragraph 5 should be amended to read: "With regard to article 2 of the Convention, the members of the Committee asked what measures had been taken to punish persons who had taken advantage of members of the backward sectors of the population."

5. The second sentence of paragraph 6 should be amended to read: "They understood from some sources that there were cluster camps in areas inhabited by indigenous peoples, and that people in those camps were subject to various restrictions, being unable to travel without permission, and members requested clarification on this subject."

6. In the last sentence of paragraph 8, the word "allegedly" should be inserted before the phrase "unlawful expropriation", and the words "had been seized" should be substituted for "could be seized".

7. The second sentence of paragraph 9 should be amended to read: "In that connection, it was asked whether it was the Government's policy to convert the members of the Jumma ethnic group to the Islamic faith, as alleged by some sources", and the third sentence should read: "In connection with freedom of

opinion and expression, information was required on the assertion that the dissemination of an official report published following a mission of inquiry to the Chittagong Hill Tracts, and the reporting of related human rights violations had been prohibited by the authorities." In the last sentence of the paragraph, the phrase "persons originating from" should be substituted for the phrase "inhabitants of".

8. Finally, the second and third sentences of paragraph 10 should be combined to read: "They inquired about the access of Adivasis to courts when they sought to bring suits in the case of land disputes, and about a five-year project run by Caritas Bangladesh to provide legal assistance to Adivasis, which allegedly had been halted by the Government."

9. He proposed that a footnote should be added to the concluding observations on the report of Bangladesh, reading as follows: "Subsequently, the Committee received from the Permanent Mission of Bangladesh a communication denying a variety of allegations made during consideration of the report."

10. Mr. ABOUL-NASR said the footnote just read out seemed to be the best solution to the problem of the letter received from the Permanent Mission of Bangladesh and discussed the previous day. The Committee was duty-bound to refer to the letter and to the allegations made, but was doing so in a summary form, without attempting to reproduce any part of the letter.

11. He informed the Committee that he had had a meeting that morning with the Permanent Representative of Bangladesh, who had undertaken that there would be no follow-up to the episode, either in the General Assembly or in any other body.

12. Mr. BANTON, Rapporteur, proposed that the Committee should thank Mr. Aboul-Nasr for his efforts on its behalf.

13. Mrs. SADIQ ALI supported that proposal.

14. Mr. FERRERO COSTA also supported the proposal, but said he was not entirely clear as to the present position. Was it now the intention not to make any reply to the letter?

15. Mr. LAMPTEY said that now that Mr. Aboul-Nasr had succeeded in persuading Bangladesh to withdraw the substance of its letter, there was no need for a reply.

16. Mr. ABOUL-NASR recalled that the original position of the Permanent Mission of Bangladesh had been extreme: it had demanded official apologies from Mr. Yutzis and Mrs. Sadiq Ali as well as publication of its letter, and had threatened to pursue the matter in the General Assembly. However, all those demands had now been dropped. To react now would mean that the whole question would have to be reopened, and in his view it was most important that any confrontation should be avoided.

17. Mr. de GOUTTES joined in thanking Mr. Aboul-Nasr for so successfully accomplishing a difficult task. As he saw it, however, the situation was simple: either the Permanent Mission of Bangladesh had withdrawn its letter,

in which case there was no need to make any reference to it, even in a footnote, or else it had not. In the latter case, some kind of action would have to be taken by the Committee.

18. The CHAIRMAN said that as he saw it, the proposed footnote was a diplomatic way of enabling the representative of Bangladesh to save face, while at the same time avoiding the need for making an official reply to the letter, a course which could be highly damaging to the Committee.

19. Mr. LAMPTEY appealed to Mr. de Gouttes not to press his proposal. The Permanent Mission of Bangladesh would undoubtedly have been acting upon formal instructions from its Government in sending the letter, and the Committee was obliged to acknowledge it in some way. The footnote proposed offered a satisfactory solution for both parties.

20. Mr. ABOUL-NASR also appealed to members not to reopen the debate. If Mr. Yutzis and Mrs. Sadiq Ali wished to write in their personal capacity to the Permanent Mission of Bangladesh explaining their position, they were free to do so. He himself agreed that the remarks complained of were perhaps unfortunate.

21. Mr. FERRERO COSTA said that if a majority of the Committee considered that there was no need for any reply to the letter, he would not insist. However, he believed that a mere footnote stating that the Committee had "received a communication" was not enough. The letter had referred very specifically to duties and responsibilities of individual members; it had also offered an interpretation of article 1, paragraph 1, of the Convention that was open to question, and the Committee ought not to remain silent on the matter. He could not agree with the solution proposed.

22. The CHAIRMAN said that since Bangladesh was no longer insisting on the original demands made in its letter, there was no need for the Committee to refer to them specifically. The footnote mentioning a "communication" was necessary, since under article 9, paragraph 2, of the Convention the Committee was required to take account of any comments made by States parties.

23. Mr. de GOUTTES said he was somewhat concerned that the Committee was now discussing at a public meeting a matter which had been dealt with the previous day at a closed meeting. As he understood it, the representative of Bangladesh had agreed not to take the matter further, but had not offered formally to withdraw its letter. That being so, he proposed that the Rapporteur should read out the preliminary draft of the reply considered the previous day, so that the Committee could hold that reply in reserve for use at the next session in the event of the original letter being made public.

24. Mr. LAMPTEY said that he did not agree with the proposal just made, which he regarded as negative. If the draft reply was to be read out, it would have to be debated. In view of the fact that Mr. Aboul-Nasr had been so successful in resolving the difficulty, he considered that the solution proposed by the Rapporteur was quite adequate.

25. Mr. SHAHI said he was in favour of adopting Mr. Banton's proposed footnote to the Committee's report. The summary records should state that, with regard to the allegations about the Committee's conduct, the observations

it had made had been in accordance with article 9, paragraph 2, of the Convention, and that with regard to the complaint about the sources used, the Committee had referred to its recommendations of the previous year, which were that the Committee, as a body of independent experts, should have access to a wide variety of sources.

26. Mr. de GOUTTES said that he was not satisfied with the solution proposed by the Committee but that since the topic was being discussed at a public meeting, his views were known.

Document CERD/C/CRP.1/Add.6, as a whole, as amended, was adopted.

Document CERD/C/41/CRP.1/Add.7

Document CERD/C/41/CRP.1/Add.7, as a whole, was adopted.

Document CERD/C/41/CRP.1/Add.8

Document CERD/C/41/CRP.1/Add.8, as a whole, was adopted.

Document CERD/C/41/CRP.1/Add.8 (Part II)

Document CERD/C/41/CRP.1/Add.8 (Part II), as a whole, was adopted.

Document CERD/C/41/CRP.1/Add.9 (Part II)

27. In reply to a question from Mr. WOLFRUM, Mr. BANTON, Rapporteur, said that reference would be made in an earlier chapter of the report to the Committee's request for additional information from Papua New Guinea and two other States.

28. Mr. de GOUTTES, speaking as country rapporteur for Viet Nam, reminded the Committee that there would be no concluding observations on Viet Nam in view of its request for the Committee to postpone consideration of its report.

Document CERD/C/41/CRP.1/Add.9 (Part II), as a whole, was adopted.

Document CERD/C/41/CRP.1/Add.1

29. The CHAIRMAN said that paragraph 9 would be supplemented by a list of liaison officers and the bodies with which they would work.

30. In reply to a comment by Mr. van BOVEN, Mr. de GOUTTES said that he would be liaising with the Council of Europe and the Parliament of the European Communities.

Document CERD/C/41/CRP.1/Add.1, as a whole, was adopted.

Document CERD/C/41/CRP.1/Add.12

Document CERD/C/41/CRP.1/Add.12, as a whole, was adopted.

Document CERD/C/41/CRP.1/Add.3

31. Mr. BANTON, Rapporteur, proposed the introduction of two sub-headings, the first of which would be inserted between paragraphs 9 and 10 and would read: "Article 9, paragraph 1: requests for information". The second would be inserted between paragraphs 10 and 11 and would read: "Other action".

Document CERD/C/41/CRP.1/Add.3, as a whole, as amended, was adopted.

Letter to the Chairman of the Commission on Human Rights

32. Mr. BANTON proposed that a new paragraph should be inserted in chapter I of the report on organizational and related matters. The paragraph would read: "At its ... meeting, in view of a special session of the Commission on Human Rights which was being convened to consider developments in the former Yugoslavia, the Committee adopted a letter to the Chairman of the Commission (see annex ... to the present report)."

It was so agreed.

The draft report, as a whole, as amended, was adopted.

ORGANIZATION OF WORK (concluded)

Working Group on national human rights bodies

33. Mrs. SADIQ ALI said that she had requested the establishment of a working group on national human rights bodies. The Committee should take a decision on setting up the working group and on its composition. The Secretariat could then make the relevant documentation available in advance to the members of the working group to enable them to prepare for meetings during the next session.

34. Mr. SHAHI expressed interest in joining the working group. He pointed out, however, that, if there were to be only one session of the Committee in 1993, and if that session were to be only of two weeks' duration, the working group might find it difficult to meet.

35. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to set up the working group, which would consist of Mrs. Sadiq Ali, Mr. Ferrero Costa, Mr. Ahmadu, Mr. Shahi, Mr. van Boven and Mr. de Gouttes.

It was so agreed.

Revision of guidelines for reporting

36. Mr. BANTON said that he had drafted a new sentence to reflect the views expressed by members of the Committee regarding requests for further demographic information in the reports of States parties, but that it might be more appropriate to take up the matter at the next session.

37. The CHAIRMAN said that, as suggested, the Committee would return to the issue of revised guidelines at its next session.

Agenda for the next session

38. Mr. AHMADU said that, in preparing the Committee's next agenda, the Secretariat should ensure that items which had been held back for one or two years should take precedence over new items, unless that would cause problems in relation to the Committee's rules of procedure.

39. The CHAIRMAN said that the Secretariat would take note of Mr. Ahmadu's suggestion.

CLOSURE OF THE SESSION

40. After thanking the members of the Committee and the Secretariat for their contributions to the Committee's proceedings, he declared the session closed.

The meeting rose at 12.50 p.m.